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Published June, 1864. Price Three Dollars.

A
MANUAL
FOR THE USE OF
NOTARIES PUBLIC
AND
BANKERS;

COMPRISING A SUMMARY OF THE LAW OF BILLS OF EXCHANGE AND OF PROMISSORY NOTES, BOTH IN EUROPE AND THE UNITED STATES—CHECKS ON BANKERS—AND SIGHT BILLS—WITH APPROVED FORMS OF PROTEST AND NOTICE OF PROTEST; AND REFERENCES TO IMPORTANT LEGAL DECISIONS; ESPECIALLY ADAPTED FOR THE USE OF NOTARIES PUBLIC AND BANKERS.

By BERNARD ROELKER, A. M., OF THE NEW-YORK BAR.

FOURTH EDITION.

WITH NUMEROUS ADDITIONS IN REFERENCE TO BILLS OF EXCHANGE AND PROMISSORY NOTES; PROTEST; TRANSFER OF BILLS AND NOTES; LETTERS OF CREDIT; FORGED BILLS; FRAUDULENT AND LOST BANK BILLS; SIGHT BILLS, &c., AND REFERENCES TO RECENT DECISIONS IN THE UNITED STATES AND ENGLISH COURTS; AND A SYNOPSIS OF THE USURY LAWS OF EACH STATE, AND THE LAW OF DAMAGES ON PROTESTED BILLS.

By I. SMITH HOMANS,

Editor of the "Bankers' Magazine and Statistical Register," New-York.

New-York:

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1864.

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P R E F A C E .

THE principal design of this summary of the law of Bills of Exchange and Promissory Notes is to furnish to that numerous class of public officers, notaries public, and officers of banks, throughout the American Union, a Manual to which they may with convenience refer for information and guidance. As such, it will also be of equal use to the commercial community, as well as to all men of business dealing more or less in these negotiable instruments.

The ponderous volumes which have been written, both in England and America, on this branch of Commercial Law, are designed for the use of the legal profession, and consequently contain much which the man of business neither needs nor cares to know. He therefore finds it inconvenient, and sometimes difficult, to gather from among the mass of legal learning those requisitions of the law which he desires to ascertain for his immediate use.

To obviate this inconvenience, and to meet the wants of the non-professional man, are the objects of the present Manual. The plan pursued in its compilation has therefore been, to state but briefly the general rules and principles of the law, and to be minute on those which relate to the rights and duties of holders of and parties to Bills and Notes. With this view, forms of Protest and of Notice have been given; and in order to render the book equally useful in every State of the Union, the statute laws of individual States, bearing upon these instruments, have been added.

A summary of the laws of Continental Europe on this subject has been prefixed, from a belief that it would be so much the more acceptable, as they are not so fully contained even in any of the larger works, although a knowledge of them often is of great importance.

Thus it is hoped this Manual will prove itself adapted to the purposes for which it was intended, and meet the wants of those for whom it was prepared.

B. R

Boston, *Sept. 28th*, 1853.

PREFACE TO THE THIRD EDITION

OF THE

MANUAL FOR BANKERS AND NOTARIES PUBLIC.

NUMEROUS subjects connected with the Negotiation and Protest of Bills of Exchange and Promissory Notes have been suggested for consideration since the publication of the early edition of this volume. With a view to illustrate these topics, and to place before the banking fraternity a reliable manual for reference by bank officers, notaries public and the mercantile community, we have thought it advisable to enlarge the original plan of this work. We are indebted to Henry Brace, Esq., a member of the New York bar, for a considerable portion of these additional materials. The first chapter is devoted to the Construction and Law of Protest of Bills of Exchange; their negotiability, &c.

Chapter Second relates to the Law of Agency, including the risks and liabilities incurred by Banks and Bankers as collecting agents—Guaranty of Bills—Forged and Lost Bills—Days of Grace.

PREFACE.

V

Chapter Third embraces a condensed view of the law relating to the "Transfer of Bills and Notes;" as to Who may Transfer them; to Whom such Transfers may be Made; Modes of Transfer; Times of Transfer; and Obligations of Endorsers.

Chapter Fourth is upon Letters of Credit.

Chapter Fifth is upon Bank Notes—the Liability to Redeem Stolen or Lost Bills. There have been, of late years, numerous cases involving large sums. All these should be familiar to every bank officer. The present volume will, therefore, be found useful for reference, by Notaries Public especially, and by all officers of banking institutions, including directors.

To the bank clerk the volume will be acceptable in furnishing a concise manual of the liabilities and risks which bankers run in the purchase of negotiable paper. *Secondly*, of the remedies in case of non-payment, protest, &c. *Thirdly*, of the course to be pursued in the loss of bills, payment of fraudulent checks, &c. The most careful bank officer is liable to impositions or losses in purchasing fraudulent bills—paying forged checks—in remittances of paper for collecting, &c. This volume is intended to supply a want long felt by the Banker and Notary Public; and the commendations bestowed on the early edition of the work are a guaranty that the later emendations will be fully appreciated by the banking fraternity.

In the preparation of this work, the editors have availed themselves of the valuable information contained in the following works, to which our banking readers are referred, and which should be found in every banker's library: I. "Brooke on the Office and Duties of Notary." (*London*.) II. "Story on Bills of Exchange." (*Boston*: Little, Brown & Co.) III. "Story on the Law of Promissory Notes." IV. "Parsons on Contracts."

NEW YORK, No. 162 PEARL STREET,

March 31, 1857.

PREFACE TO THE FOURTH EDITION

OF THE

MANUAL FOR NOTARIES PUBLIC AND BANKERS.

SINCE the publication of the third edition of "*The Manual for Notaries Public and Bankers*," in March, 1857, numerous and interesting questions have been decided in the State Courts, in reference to the law of Bills of Exchange, Promissory Notes and of Banking. The present edition, while it adds two hundred pages of matter to the original work, furnishes to the notary and to the banker a summary of these important decisions of the past seven years, and points out where more copious information can be had on these subjects by those who wish to make themselves familiar with the law of bills and notes.

In the present edition may be found chapters on the Law of Agency—on the Transfer of Bills and Notes—on the Law of Letters of Credit—on the Law of Bank Notes—Decisions in all the State Courts—the Law of Usury—the Law relating to Notaries Public, and the existing laws of each State in reference to Interest, Penalty for Violation of the Usury Laws, and the Laws relating to Damages on Protested Bills of Exchange, Foreign and Domestic.

The "MANUAL," in its present shape, is more of a Digest than before, and will no doubt prove more acceptable, not only to the Notary Public and Bank Cashier, for whom the work was originally intended, but to the Bank Director, the Bank Clerk and the Private Banker; in fact, to all who deal in commercial paper, and who wish to inform themselves as to the rights and liabilities of holders of bills and notes, and of parties thereto.

The business of banking in this country is rapidly assuming increased importance, along with the growth of commercial intercourse. Hence the necessity, on the part of the Bank Clerk, to make himself familiar with the law and usages as to negotiable paper. Legislation is constantly producing changes in the several States, and the bank officer is expected to know the tenor of these movements.

NEW-YORK, June, 1864.

A MANUAL FOR NOTARIES PUBLIC.

Published in the Bankers' Magazine, New York, 1853.

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called *primicerius*. The state authorities began, more and more, to exercise surveillance over them, which even went so far that the magistrates determined whether a person should be admitted into, or an unworthy person be removed from, this guild of *tabelliones*.

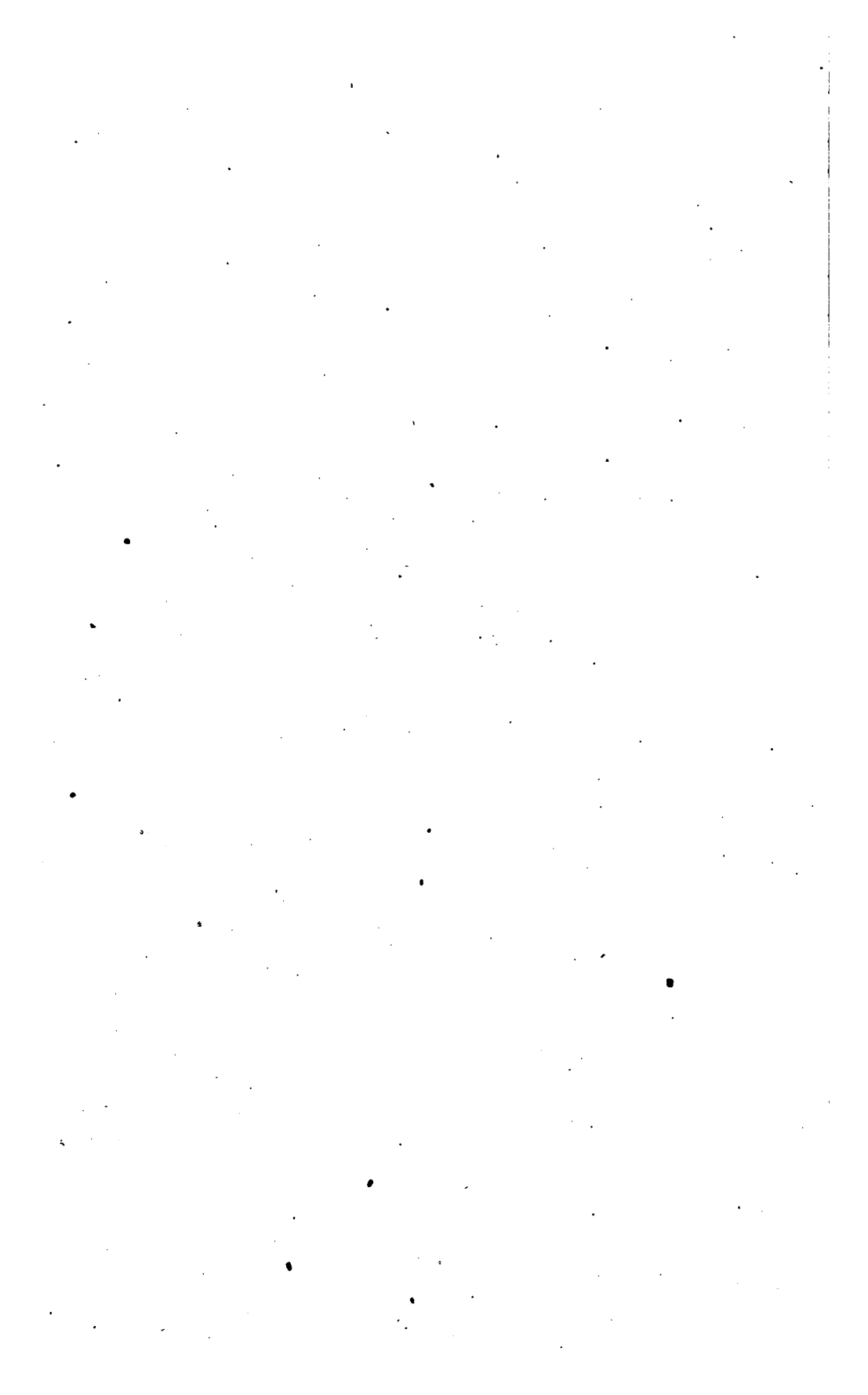
These persons prepared all kinds of legal documents and papers, but they still carried on their business in the public market-place. It was soon found necessary, for judicial purposes, to define by law what should be the requisites of such notarial acts and writings, to make them legal evidence. It had become a usage, in important matters, to have witnesses also attest the papers drawn up by these public scribes or *tabelliones*, and it was finally required by law, that three witnesses should attest a document, in case the principals could write, and five witnesses, if the parties could not write. It was moreover required, that the notary (*tabellio*) should be present in person, at the drawing up of the document, and also affix his signature and the date of execution.

During the Empire, another class of officers, called *tabularii*, came up in the cities. Their functions resembled somewhat our archivaries and auditors. They also made out certain documents, and these bore sometimes the names both of a *tabellio* and a *tabularius*; but at a later period both names are used as synonymous.

Under the Frankish kings Roman institutions were imitated. In the imperial bureaux, the emperors needed and employed persons for drawing up documents and countersigning them. These officers were called *referendarii*, *cancellarii*, and *notarii*. The chief of these officers was called *archinotarius* or *summus notarius*, but at a later period *cancellarius*, as a more honorable title. The Frankish kings, as early as the year 803, appointed these officers, and issued laws to prevent the abuse of their power. It became later the sole prerogative of the kings to appoint these notaries; but by degrees the Popes of Rome also assumed the same right; and we find in documents notaries named who were appointed by princes and bishops, and even by cloisters.

The legal powers of notaries, during the Middle Ages, and their condition, as a distinct class of officers, are distinctly seen in the Italian cities. They acted either by authority of the Emperor, or that of the Pope, and were engaged for drawing all the various legal documents, and especially last wills and testaments, which were received in all the courts of law as full proof. They were formed into a guild, called *collegium*, and had their own prefects, called *consules*. A candidate for admission into this college had to undergo an examination. Minute and strict rules for the drawing up of instruments, and their attestation, were prescribed. The study of notarial functions was reduced to rules, and notarial schools were established in many cities.

Notaries came to be regarded, at an early period, as a kind of judges (*judex chartularius*), and a practice grew up among them of inserting in bonds, or other documents of indebtedness, a power for the creditor of taking out execution, by application to the court, in case of non-fulfilment of the contract, which laid the foundation of the so-called "executory process," which prevails still in the Civil Law countries, and which corresponds somewhat to the warrant of attorney to confess judgment in



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By I. SMITH HOMANS,

Editor of the "Bankers' Magazine and Statistical Register," New-York.

New-York:

PUBLISHED AT THE OFFICE OF THE BANKERS' MAGAZINE.

1864.

We shall give, in the following pages, a synopsis of the law on bills of exchange and promissory notes, as recognized in the United States and England, and prefix a general statement of the law on this subject which prevails on the Continent of Europe.

Foreign Laws regarding Bills of Exchange and Promissory Notes.

As the English law agrees, in almost every particular, with that in the United States, we shall here point out only the principal and essential rules which prevail on the Continent of Europe, among the different nations, in regard to bills of exchange and promissory notes. The most important nations are the French and the German. The French Commercial Code on bills and notes has been adopted in a number of other countries, viz. Belgium, Modena, Sardinia, Lucca, Poland, Greece, Geneva, Hayti, Ionian Islands, Turkey and Wallachia, the Papal States, Luxemburg, Tessin and Wallis, with but slight variations here and there; so that, when we speak of the French law, it will equally apply to all these countries.

A new and uniform code of laws regarding bills of exchange and promissory notes has been introduced, since 1849, throughout Germany (with the exception of the small states of the Grand Duchy of Luxemburg, the Duchy of Limburg, and the principality of Liechtenstein), so that when we speak of the German law, it will apply to every one of the thirty-eight States of Germany (excepting the above-named three), including the whole of Austria and her crown-lands, and the whole of Prussia, Wurtemberg, Bavaria, Hanover, Saxony, Brunswick, Baden, etc., containing more than sixty millions of people, and the important commercial cities of Hamburg, Bremen, Frankfort on the Maine, Lubeck, Leipzig, Berlin, Vienna, Trieste, Brunswick, Stuttgart, etc.

There exist yet distinct codes on bills and notes in Russia, Holland, Copenhagen, Spain, Portugal, at Basle, and St. Gallen, which we shall notice where they essentially differ from other codes.

The law on the Continent of Europe, in regard to legal remedies on bills and notes, is more stringent than in regard to other civil contracts, in so far as it allows personal imprisonment for a breach of such a commercial engagement, be it as drawer, acceptor, or indorser; whereas no personal arrest and imprisonment can be had against a debtor for an ordinary debt. When we use the expression, that a party is liable according to the laws of bills of exchange, it must be understood, also, to mean, that these extreme legal remedies of coercion may be applied to him.

The time of imprisonment differs in different states, and varies according to the amount of indebtedness. The French law allows personal imprisonment not exceeding one year, if the debt does not exceed 50 francs; two years if the debt does not exceed 1,000 francs; three years for a bill of from 1,000 to 3,000 francs; and four years for a debt of from 3,000 to 5,000 francs, and five years for any sum beyond this. But persons of the age of seventy are entirely exempted from arrest, and parties to promissory notes (*billets à ordre*), if not merchants, ex-

cept the notes were given on account of some mercantile transaction, traffic, exchange, banking, or brokerage, are also free from personal arrest in France.

In Austria, the imprisonment for a debt on bills cannot exceed one year, in Prussia, five years; other German states differ in regard to time, but they are, generally, less rigorous than the French law, and exempt from arrest, beside persons of the age of seventy, various others; for instance, relations by blood or otherwise, military persons, public officers, &c. The creditor, however, has to bear the expense of board for the debtor, and if he neglects to provide for it, the debtor is released and cannot be arrested again.

Requisites of Bills of Exchange.

A bill of exchange is called in French *Lettre de Change*; in Italian, *Lettera di Cambio*; in German, *Wechsel*, or *Gezogener Wechsel* (a Drawn Bill, to distinguish it from a promissory note, which is called a Dry Bill, *Trockner Wechsel*). (See Promissory Notes.)

The essential requisites of a bill of exchange in Germany are (Art. 4): — 1. That the word “bill of exchange” (*Wechsel*) be contained in the instrument, or, if written in a foreign language, the expression corresponding to it. 2. The specification of the sum of money. 3. The name of the person or firm to whom or to whose order it is payable. 4. The statement of the time of payment; and this can be made only on a day certain, at sight (*a vista*, etc.), or at a certain time after sight, or at a certain day after date, or at a certain fair (*Messe*). 5. The signature of the drawer, by his name or firm. 6. The statement of the place and date of month and year where and when it was drawn. 7. The name of the person or firm on whom it is drawn (*Drawee*). 8. The specification of the place of payment; if no place is mentioned, the place of the drawee is to be taken as the place of payment and the domicile of the drawee.

The bill must be for the payment of a sum of money, and not for goods or state stocks; nor can it be made payable with interest, or with any condition attached to it.

The Code of the Kingdom of the Two Sicilies allows also payment in goods.

The bills of exchange payable to bearer (*au porteur*) are not admissible, either in Germany or France.

The French law (Art. 110) requires that bills of exchange shall be drawn from one place on another place; that they shall be *dated*, and that they specify: — 1. The sum to be paid. 2. The name of the person who is to pay the same. 3. The time *when*, and the place where, the payment is to be made. 4. The value furnished, whether in money, in merchandise, in account, or in any other manner.

They are drawn to the order of a third person, or to the order of the drawer himself. If they be drawn in sets, 1, 2, 3, etc., it must be so expressed.

Art. 111. A bill of exchange may be drawn upon one person, and

payable at the domicile of a third. It may be drawn by the order and for the account of a third person.

Art. 112. All bills of exchange, containing a fictitious name, quality, domicile, place where drawn or where payable, are held to be only simple promises; (Art. 113) the signature of a married or single woman not a trader or merchant, is equivalent, with respect to her, only to a simple promise; and (Art. 114) bills of exchange signed by minors not merchants, are void in respect to them.

In Germany, every person who can lawfully bind himself by a contract may become a party to a bill of exchange. The age of majority is, however, different in different states; in Prussia it commences with the completion of the twenty-fourth year of age; in Austria, Bavaria, Saxony, Baden, and in those states on the Rhine where the French Civil Code prevails, it commences with the twenty-first year of age, and the same is the case in France and Turkey.

In Sardinia, only merchants can draw inland bills, but any body may draw foreign bills.

The Russian law excludes only women who do not carry on commerce.

The Code of the Kingdom of the Two Sicilies excludes women in general.

The Code of Copenhagen makes the capability of becoming a party to a bill of exchange general, but confines it only to bills of exchange, and does not include promissory notes.

The Spanish Code of Commerce of 1829, § 434, grants to other persons than merchants the right of also becoming parties to bills of exchange, but only in cases where they have drawn or accepted bills on account of a mercantile transaction.

Parma and Tuscany grant only to merchants the right of becoming parties to bills.

The Code of Basle of 1809, § 53, requires that a person's name be entered in the book of mercantile firms, called the book of *Raggiones*, which is in many cities kept either at the exchange or the city-hall.

The law of Basle requires the sum payable to be stated in letters, and not merely in figures; the laws of Russia and Copenhagen require the sum to be stated both in letters and in figures; and the law of St. Gallen provides, that any erasure or alteration of the sum, or any other requisite part of the bill, renders the bill void, and entitles the drawee to refuse payment. By the law of Copenhagen, the bills payable to bearer (*lettres au porteur*) are allowed, but not by the law of Germany or France.

By the French law (Art. 129) a bill of exchange may be drawn payable at sight, or at one or more days, or months, or usances, after sight or after date; or on a day fixed, or at or during a fair (*en foire*); and (Art. 132) the usance is thirty days, which run from the day after the date of the bill; and (Art. 133) a bill payable at the fair is at maturity on the evening preceding the day fixed for the termination of the fair, or the day after the fair, if it continue only one day.

The German law (Art. 4, No. 4) does not now allow bills drawn in

Germany on a foreign country, or inland bills, to be drawn at *usance* (*a uso, mezzo uso, doppio uso*, i. e. at single, half, or double *usance*), or *a piacere*, "on demand" (with the exception of Austria, which allows the latter). If foreign bills are drawn upon any German state at a *usance*, the time of maturity (*échéance, scadenza*) is to be determined by the foreign law, viz. that of the place where the bill is drawn, which law also determines whether the *usance* is counted from the day of presentation, or from the day of drawing. The German law does not admit either of fixing the time by the happening of certain events, or by certain periods of time, as "on Easter," etc.

The law in Turkey does *not* admit *usance* (Art. 87), differing in this respect from the French law.

The law of Norway (of 1842) provides (Art. 1) that bills shall not be drawn beyond the time of six months, or, if payable out of Europe, not beyond one year. The law of Copenhagen appoints still shorter periods.

Indorsement.

In Germany, the law in regard to indorsement (*Indossament, Endosso, Giro*) is, that the payee can transfer a bill of exchange upon another person by indorsing it either in blank, or in full, and the indorsee will have the same rights against all other antecedent parties as the indorser, and the payee may indorse, and the bill is negotiable, although the drawer did not make it payable to order. If the drawer does not wish to make it negotiable, he must insert the words "not to order" (*nicht an Ordre*) or something similar. The mere striking out of the word "order" in the printed formula, and adding the word "self" to the name of the payee, will not operate as forbidding the negotiability. The blank indorsement must be put on the back of the bill, or of a copy of it, or on a piece of paper, commonly called "Rider" (*Alonge*), connected with, and joined to the bill or copy. Every holder may fill up the blank indorsement, or may also indorse it further in blank, and is answerable to all subsequent holders, unless he adds the words "without guaranty" (*ohne Gewährleistung, ohne Obligo*) or some similar expression, which corresponds to our "without recourse." If the words "not to order" (*nicht an Ordre*), or a similar expression, are added to an indorsement, and the bill is yet indorsed or handed over to other persons, these subsequent holders can have no recourse against such an indorser. But if the words *in procura*, "for collecting" (*zur Einkassirung*), are added to an indorsement, then such an indorsement does not transfer the property in the bill, but empowers such indorsee to indorse it further for the same purpose, and also to have the bill protested, and to give notice to his antecedent indorser, and to commence legal proceedings for non-payment.

The laws of Copenhagen (Denmark), Holland, Russia, and Sweden, also allow blank indorsements.

But the French law requires (Art. 137 of the Code) that, in order to pass a valid title to a bill, the indorsement should be dated, and the name of the indorsee and the value should be stated, and if further nego

tiability be intended, the words "to order" should be added. A blank indorsement is held to be a mere "*procura* indorsement," i. e. for the purpose of collecting. The Spanish law, which also prevails in Mexico and South America, holds the blank indorsement of no effect. The French and Russian laws punish the antedating of an indorsement like forgery. But the Spanish and Dutch laws regard it as forgery only when it is done for an evil purpose.

The law of Portugal requires the date to a blank indorsement.

The French law, and all the countries following the same, the Russian law, and that of St. Gallen, hold only bills made payable to order as negotiable and transferable.

The Spanish law (of Bilbao) requires the indorsement on the back of the instrument.

The Sardinian law regards the clause "without recourse," "*without obbligo*," as not written at all; and if the *drawer* should add these words to his name, the instrument is not regarded as a bill.

The law in Germany is (Art. 16), when a bill has been indorsed after the lapse of time accorded to protesting for non-payment, that the indorsee acquires the rights springing from the acceptance against the drawee, and the right of recourse against those who indorsed it after the lapse of this period.

But if the bill has been protested for non-payment before the indorsement is made, then the indorsee has only the rights which his indorser has against the acceptor, the drawer, and the indorsers up to the time of protest. Nor is such an indorser after protest, in such a case, liable according to the laws on bills, but only according to the common law.

The Russian law makes a like distinction.

The Dutch and Portuguese laws regard an indorsement after maturity only as a cession of rights.

The Sardinian law regards it only as an indorsement for procuration.

The French law is not decided on this point, and the courts regard such an indorsement generally as admissible, but sometimes as a full and good indorsement, and then again only as one for procuration, i. e. power of attorney.

In Italy it is regarded as a *procura* indorsement, i. e. as a power of attorney.

Presentation for Acceptance.

The German law (Art. 18) provides, that the holder of a bill is entitled to present the bill for acceptance at once, and, if not accepted, to have it protested for non-acceptance. But bills payable at fairs (*Mess-Wechsel, cambia regularia vel feriarum*) can be presented only at the time fixed by the law for presentation. The mere possession of a bill entitles a person to present it, and to have it protested, in case of dishonor.

But (Art. 19) the holder of a bill, payable at sight, or a certain time after sight, must present it at least within *two* years from the date of its being drawn; and if a period of presentation has been prescribed either by drawer or indorser, the bill must be presented within that period,

or the holder will lose his right of recourse against drawer and indorser as debtors on account of the bill.

The law of Russia fixes the time, within which bills at sight or after sight must be presented, at one year, unless the drawer has prescribed a period; but in case of neglect to present the bill, it will still be good as evidence of indebtedness for the ordinary period, beyond which debts become outlawed.

The laws of other countries fix the time of presentation for acceptance or payment according to the distance from the place of drawing to the place of payment.

The French law (Art. 160) requires that the holder of a bill of exchange, drawn from the Continent and the European islands, and payable in the European possessions of France, whether at sight, or at one or more days, months, or usances after sight, must demand payment, or acceptance, within six months from its date, under the penalty of losing his remedy against the indorsers, and even against the drawer, if the latter had made provision for the payment of the bill in the hands of the drawee.

A delay of eight months is allowed for the presentment of a bill drawn from the ports of the Levant, and northern coast of Africa, on the European possessions of France, and, reciprocally, from the Continent and European islands on the French establishments in the Levant, and northern coast of Africa.

A year is allowed for the presentment of bills drawn on the western coast of Africa, as far as, and including, the Cape of Good Hope. A year is also allowed for the presentment of bills of exchange drawn from the American continent and West-India islands on the European possessions of France, and, reciprocally, from the European continent and islands on the French possessions or establishments on the western coast of Africa, on the American continent, and West-India islands.

Two years is allowed for the presentment of bills of exchange drawn from the East-India continent and islands on the European possessions of France, and, reciprocally, from the European continent and islands on the French possessions or establishments on the East-India continent and islands.

The delays above mentioned, of eight months, one year, and two years, are allowed to be doubled in time of maritime war.

If the drawer has not made provision for payment with the drawee, the former will be held liable, although a protest has been made after the time fixed by law.

Of Acceptance

The law of Germany (Art. 21) requires that acceptance of a bill shall be made in writing on the bill itself; and if the drawee writes but his name or that of the firm on the face of the bill, it is considered an absolute acceptance, and every declaration written on the bill and signed is taken as an absolute acceptance, unless the drawee expressly states in it that he will not accept, or will accept only on certain conditions. The acceptance, once made cannot be taken back.

(Art. 22.) The drawee may restrict his acceptance to only a part of the sum specified in the bill. But if other limitations or conditions be added, the bill is regarded like one non-accepted; the acceptor, however, is answerable for the contents of his acceptance according to the law on bills.

(Art. 23.) The drawee, by his acceptance, becomes liable, according to the law on bills, to pay the accepted sum at maturity, and he is also liable to the drawer according to the law on bills. But the drawee has no rights peculiar to bills, as against the drawer.

The French law (Art. 122) requires that the acceptance of a bill of exchange must be signed; it is expressed by the word "accepted" (*accepté*) it is dated, if the bill be at one or more days or months after sight. And in the latter case, the want of a date to the acceptance renders the bill payable at the term specified in it, counting from the date when it was drawn.

The same rule prevails in those countries which have formed their laws on bills after the French law, which countries have been specified before; it also obtains by the law of Copenhagen.

By the Spanish law, such a bill runs from the day on which it might have been presented, according to the ordinary course of the post.

The French law (Art. 124) enacts, that the acceptance cannot be conditional, but it may be limited in regard to the sum accepted. But in this case the holder is bound to have the bill protested for the deficiency. And (Art. 125) a bill of exchange must be accepted on its presentment, or, at the latest, within twenty-four hours afterwards. After the twenty-four hours have elapsed, if it be not returned, accepted or not accepted, he who has retained it is liable in damages to the holder.

The German law (Art. 20) provides, that if a drawee refuses acceptance, or refuses to date his acceptance, the holder must have the bill protested within the period prescribed for presenting a bill (i. e. two years from date or the time prescribed by drawer or indorser), or he will lose his legal claim against indorser and drawer. The day of protest is, in that case, taken for the day of presentation.

If no protest has been taken, and the acceptor has omitted to date his acceptance, the maturity of the bill is counted from the last day of the period within which it ought to have been presented.

The law of Portugal and Russia and St Gallen makes it generally obligatory, and the law of Holland makes it obligatory only upon the holder, who presents the bill for acceptance, to have the bill protested, absolutely and without delay.

The Spanish law (Law of Bilbao, chap. 13, § 35, which also prevails in Mexico and South America) provides, that the drawee, who gets the bill into his hands, with the consent of the holder, and lets the day of presentation pass by without returning it, is obliged to pay, that is, it is deemed a silent acceptance; and if the acceptance is made in writing, it is required (Bilbao, chap. 13, § 33) that, beside the name of the drawee, also the word "accepted" be added. The law of Bilbao (chap. 13, § 32) has yet the peculiar provision, that, when bills at sight are accepted, only one half of the name of the firm need be signed.

By the French and Portuguese laws, a similar word with "accepted" may be substituted; but it is a mooted question whether the word *vu*, "seen," is sufficient.

The laws of Copenhagen and Portugal also allow, like the French and German laws, the acceptance for a smaller sum than the face of the bill states, and oblige the holder to have the bill protested for the rest, but consider all other conditions as not written.

The Russian law also requires the holder, in such a case, to have the bill protested, or he will lose his right of recourse against the other parties.

In Germany, the law requires the drawee to declare at once, without delay, whether he will accept or not. But the law of France, and of those countries which have been named before as having followed the French law, allows the drawee twenty-four hours' time, as stated before.

The law of Copenhagen also allows twenty-four hours for consideration, and requires the protest only on the next day following.

The law of Tessin allows three days for consideration, and the law of Russia grants time, for taking protest and sending it, till to the second post.

Proceedings upon Non-acceptance.

When acceptance has been refused, or when the acceptance is qualified, or for a smaller sum than stated in the bill, the law in Germany (Art. 25) obliges the indorsers and drawer, upon receiving the protest for non-acceptance, to give sufficient security that payment of the whole sum, or of so much as has not been accepted, shall be made on the day the bill falls due for payment, together with the amount of cost. The sum may likewise be deposited in some court of justice, or other authorized institution.

(Art. 28.) The deposited security is restored, if the bill should afterwards be fully accepted, or if the holder or other person who takes recourse does not commence a suit within a year from the maturity of the bill, or if the bill has been paid.

The French law is the same with that in Germany. But the law of Denmark, Sweden, and Norway, like the English and American law, allows immediate recourse against drawer and indorsers for payment, if the bill has not been accepted.

The law of Portugal follows the French law, but gives the holder also the right to demand from the drawer that he assign and hand over to him all his claims against the drawee, and all the papers relating thereto.

The German law further provides, that when the bill has been accepted, and the acceptor stops payment or goes into bankruptcy, or if an execution against the property of the acceptor has not been satisfied, or his person has been arrested for non-payment, — in all these cases, the holder of a bill may demand security, if the acceptor has not given security, and a protest has been taken in consequence.

The French law (Art. 163) goes yet further, and provides, that, if the

acceptor fails before the day of payment, the bill may be considered as due, and recourse may be had for payment against the drawer and indorsers; and that if the drawer of a promissory note, or the acceptor of a bill, or the drawer of a non-accepted bill, shall fail, the other persons liable on the instruments shall be obliged to give security (Law of 28th May, 1838).

Time of Payment.

The following rules prevail in Germany:—

Art. 30. If a day is specified in the bill of exchange as the day of payment, the bill becomes due on this day. If the time of payment is fixed upon the middle of a month, the bill falls due on the 15th of the month.

Art. 31. A bill at sight is due when it is presented. Such a bill must be presented within two years, or the holder will lose his right of redress against the drawer and indorsers; and if one of the indorsers has added a specified time within which it shall be presented, the holder must present the bill within that period, or he loses his right over.

Art. 32. If a bill is payable a certain number of days after sight, or after date, the bill falls due on the last day of the prescribed period, exclusive of the day on which it has been drawn or accepted; that is to say, if the bill is drawn on the 1st of January, and is payable ten days after date, it falls due on the 12th of January; the same would be the case if it were payable ten days after sight, and had been accepted on the 1st of January.

If the period is specified by weeks, months, a year, half a year, or a quarter of a year, then the bill falls due on the day corresponding to that of the day of drawing or acceptance; and if this day is not contained in the month of payment, the day of payment falls on the last day of that month; i. e., if the bill is dated the 1st of January, and is payable three months after date, it falls due on the 1st of April, and if it be dated the 30th of January and payable one month after date, it falls due on the 28th of February.

And if the expression "half a month" is used, the period is held to be fifteen days; and if several months and half a month are used, the fifteen days are counted last.

Art. 33. *Days of grace* are not allowed.

Art. 34. If a bill, payable after date in inland, is drawn in a country where they count after the old style, and if it has not been noted that the bill is dated after the new style, or if it be dated after both styles, the bill falls due on that day of the new style which corresponds to the day of the old style.

Art. 35. Bills payable at fairs (*Mess- or Markt-Wechsel*) fall due on the day appointed by law at the respective places; and if no day has been fixed by law, on the day before the ending of the fair or market; and if the fair or market lasts but one day, it falls due on that day.

The following days have been fixed by law at the principal cities:—

In Brunswick it is law, that no protest for non-acceptance can be had

on a bill drawn on the Brunswick fair, before Monday in the first week of the fair, and the day of payment of these bills is the Wednesday in the first week of the fair.

In Frankfort-on-the-Maine it has been enacted, that bills which are drawn payable at a fair, without specifying the week of the fair, must be paid or protested on Tuesday of the third week; i. e. on the last day of the fair.

In Austria, in the countries where the general civil code prevails, such bills fall due, if the fair last but one day, on this day; if it last several days, but not more than eight, on the day before the legal termination of the fair; and if the fair last longer than a week, on the third day before the legal termination of the fair.

In Hungary, such bills fall due, if the markets last but one day, on this day; if they last from two to eight days, on the last day of the market; if the markets last longer than eight days, on Wednesday of the second week.

In Leipzig, bills that are drawn payable at the Michaelmas fair fall due on the Thursday after the fair has been opened by the ringing of the bell, and bills payable at the New Year's fair fall due on the 12th of January, and if this should fall on Sunday, then on the next following day.

According to the law of Portugal and Spain, bills drawn payable at fairs fall due on the last day of the fair.

The law of France (Art. 130) provides, that a bill drawn at sight is payable on its presentment, and (Art. 131) that the maturity of a bill, at or after a certain time after sight, is determined by the date of the acceptance, or by that of the protest for non-acceptance. (Art. 182.) The usance is thirty days, which run from the day after the date of the bill. The months are according to the regulation of the Gregorian calendar. (Art. 133.) A bill payable at the fair (*en foire*) is at maturity on the evening preceding the day fixed for the closure of the fair, or the day of the fair, if it continue only one day.

Art. 134. If a bill fall due on a legal holiday, it is payable the preceding evening.

Art. 135. All days of grace, of favor, of usage, or local custom, for the payment of bills of exchange, are abolished.

The law of Copenhagen counts the day when the bill is dated, and grants to the acceptor *eight* days of grace, and to the holder *ten* days of grace (called in Italian *giorni di rispetto*).

The law of Russia (§ 66) allows on bills at or after sight *three* days of grace, and on other bills *ten* days of grace, and the same on promissory notes.

The law of St. Gallen allows *six* days of grace on bills and promissory notes.

The German law (Art. 38) enacts, that the holder *must* not refuse an offered part-payment, even though the bill has been accepted for the whole sum.

The French law (Art. 156) states that the payments made on account, as part of the amount of a bill of exchange, operate in discharge of the drawer and indorsers. The holder is bound to have the bill protested for the balance.

The holder, therefore, does not appear to be *bound* to take the part-payment; and the Spanish law says so expressly.

The law of Germany (Art. 91) provides that the presentation for acceptance or payment, the taking of protest, the demand of a duplicate of a bill, and all other necessary acts, must be made and had at the place of business of the person concerned, and if he have none, at his dwelling. It can be done at another place, e. g. at the exchange, only by mutual agreement.

It is taken as certain that a person's place of business or domicile cannot be found, only if the notary or judicial officer has made inquiries at the police-office of the place, without any result, which must be noted in the protest.

If (Art. 92) a bill falls due on a Sunday or general holiday, the next secular day is the day for payment. Also the declaration in regard to acceptance on part of the drawee, or any other act, can be demanded only on a secular day. If the last day of the period within which an act must be done falls on a Sunday or holiday, the act must be done on the next succeeding secular day. And this rule relates also to the taking of protest.

According to the laws of France, Basle, Portugal, and Spain, a bill falling due on a holiday or Sunday is payable on the *preceding* secular day, as by the English and American law.

Proceedings upon the Non-payment of Bills.

In order to entitle the holder to redress, it is required of him in Germany, that he present the bill for payment, and that he have the bill duly protested. The protest *may* be made on the day of payment, but it *must* be made, at latest, on the second secular day after the day of payment. The presentation of the bill for payment may, likewise, be made within this period of two days, and the holder would not lose his rights, even if he had waited with the presentation to the last day of protest, and the drawee were yet solvent on the day the bill fell due. But a protest before the day of maturity is not good, although payment would not have been made on the day of maturity.

The law of Basle, St. Gallen, Zurich, Russia, Spain, and Portugal, requires, that the bill be protested on the day of maturity, and up to a certain hour of that day (the latter provision is not law in Portugal).

The law of France (Art. 162) and Holland (§ 179), however, requires protest on the day after the day of maturity (*lendemain*); and if this day be a legal holiday, the protest is made on the following day.

If a bill is made payable at a place different from the domicile of the acceptor, and a person there is specified, the German law requires that it must be presented to such person; and if no person be specified, it must be presented to the acceptor at the place specified, and in case of non-payment, it must be protested there. If the proper protest is neglected, the holder loses his recourse, not only against the drawer and indorsers, but also against the acceptor. But in no other case is the acceptor discharged from his liability by the German law (Art. 44). and no

presentation on the day of payment, and no protest, are necessary as to him.

The law of Sweden requires proper protest even in regard to the acceptor, or he will be released.

Notice.

The German law (Art. 45) requires that the holder of a bill, protested for non-payment, give notice in writing of the non-payment of the bill to his immediate indorser, within two days after the day of protest being taken; and it is sufficient if the notice be put in the post-office within this time.

Every indorser thus notified must, within the same time, counted from the day on which he received notice, give a like notice to his indorser.

The holder or indorsee who neglects to give notice, or who does not send it to his immediate indorser, becomes thereby liable to all, or the omitted, antecedent parties, for the damage resulting from the omission of giving notice. Besides, he loses, as against these persons, his claims for interest and cost, so that he can demand only the sum specified in the bill.

The French law (Art. 165) states, that if the holder would pursue his remedy individually against his immediate indorser, or the drawer, in case the bill came directly from him, he must give him notice of the protest, and, in default of reimbursement, commence his suit against him within a fortnight (*dans les quinze jours*) from the date of the protest, if the said indorser or drawer reside within the distance of five *myriamètres* (10 leagues, equal to about twenty-four miles).

This period of delay, with respect to the indorser or drawer domiciled at a greater distance than five *myriamètres* from the place where the bill of exchange was payable, shall be increased one day for every two and a half *myriamètres* exceeding the five before mentioned.

Art. 166. In case of the protest of bills of exchange drawn in France, and payable out of the continental territory of France in Europe, the remedy against the drawers and indorsers residing in France must be pursued within the following periods, to wit:—

Two months for bills payable in Corsica, in the island of Elba, or Oupraja, in England, and in the countries bordering on France.

Four months for those payable in the other states of Europe.

Six months for those payable in the ports of the Levant and on the northern coast of Africa.

A year for those payable on the western coast of Africa, as far as, and including, the Cape of Good Hope, and in the West Indies.

Two years for those payable in the East Indies.

These periods of delay are allowed in the same proportions for pursuing the remedy against the drawers and indorsers residing in the French possessions situated out of Europe.

The above-mentioned delays of six months, a year, and two years are allowed to be doubled in time of maritime war.

Art. 167. If the holder pursue his remedy against the indorsers and the drawer jointly, he is allowed, with respect to each of them, the period of delay determined by the preceding articles.

Each of the indorsers has the right of pursuing the same remedy, either individually or jointly, within the same periods of delay.

In respect to them the time allowed begins to run from the day after the service of judicial citation.

Art. 168. After the expiration of the above-mentioned periods of delay, For the presentment of a bill of exchange at sight, or at one or more days, or months, or usances, after sight,

For the protest of non-payment,

For the action against sureties,

The holder of a bill of exchange is barred of all rights against the indorsers.

Art. 169. The indorsers are equally barred from all remedy against prior indorsers, after the expiration of the above periods of delay, each as it respects himself.

Art. 170. The same exception to the right of action of the holder and the indorsers is allowed with respect to the drawer himself, if the latter prove that provision was made for the payment of the bill at its maturity.

The holder, in this case, preserves his right of action only against the person on whom the bill was drawn.

Art. 171. The effect of the forfeiture of the right of action stated in the three preceding articles, ceases in favor of the holder against the drawer, or against any of the indorsers, who, after the expiration of the periods fixed for the protest, notice of protest, or the commencement of the suit, has received by account, or compensation, or otherwise, the funds designed for the payment of the bill of exchange.

Art. 172. The holder of a bill protested for non-payment may, by obtaining the permission of the judge, attach, for security's sake, the personal property of the drawers, acceptors, and indorsers.

The law of Portugal (§§ 404 - 406) requires notice to the immediate indorser, or the holder will lose his right to damages only; and further determines, that, by a suit against one indorser only, all other subsequent indorsers who are not sued at the same time will be discharged. The time within which suit may be brought is the period for ordinary debts, five years.

The law of Holland also makes the holder, who does not give notice to his immediate indorser, lose his right to damage and interest too, and fixes certain periods within which suit must be brought; the shortest is one year.

The law of Spain (§ 535) orders, that, after a suit of indemnity has been commenced against an antecedent party, the others can be proceeded against only in case of the insolvency of the first; and that, if the suit is first commenced against the acceptor, the antecedent parties must be notified of the protest, or they will be discharged from their liability.

The law of Copenhagen requires notice of the protest, both for non-acceptance and non-payment, to all against whom the holder will have recourse, or he will lose his right to it.

The Russian law requires notice of protest and presentation of the bill to the immediate antecedent party, and allows recourse only in succession. Antecedent parties who have been skipped are at once discharged from their liability. But the omission of protest and notice effects only a discharge of the antecedent parties from the recourse according to the law on bills, and they remain still liable in an ordinary suit for the payment of the bill, but without being liable to indemnity for damages resulting from such neglect.

Protest.

The German law (Art. 87) requires that a protest shall be taken by a notary public or an officer of court, but it is not necessary to have witnesses, or a recording clerk.

And (Art. 88) the protest must contain : —

1. A literal copy of the bill of exchange or of a copy of it, and of all the indorsements and notes which are on it.

2. The name or the firm of the persons for whom and against whom the protest is taken.

3. The demand made upon the person against whom the protest is taken, his answer, or the remark that he gave none, or that he could not be found.

4. The statement of the place, date, month, and year when the demand was made, or was attempted without success.

5. In case of an acceptance *supra protest*, or of a payment *supra protest*, the statement by whom, for whom, and how it was offered and made.

6. The signature of the notary or the judicial officer who has taken the protest, with his seal of office affixed.

Art. 89 provides, that, if a demand must be made on several persons, to perform something in regard to a bill, one document of protest is sufficient.

The French law (Art. 173) provides that the protest for non-acceptance or non-payment must be made by two notaries, or by one notary and two witnesses, or by a bailiff (*huissier*) and two witnesses. The protest must be made, —

1. At the domicile of the person on whom the bill is drawn, or at his last known place of residence.

2. At the domicile of the person mentioned in the bill of exchange, who is to pay it in case of need (*au besoin*).

3. At the domicile of the acceptor *supra protest (par intervention)*.

4. The whole in a single instrument of writing. In case of false indication of domicile, the protest is preceded by a certificate of perquisition or inquiry.

Art. 174. The protest contains, — 1. The literal copy of the bill of exchange, the acceptance, indorsements, and directions therein contained;

2. The demand of payment of the bill of exchange. It declares, —

1. The presence or absence of the person who ought to pay it; 2. The motives of refusing payment, and the inability or refusal to sign.

Art. 162. The refusal of payment must be verified, the next day after

it became due (*le lendemain du jour de l'échéance*), by a protest for non-payment (*protêt faute de paiement*).

If this day be a legal holiday, the protest is made on the following day.

Art. 163. The holder is not excused from making the protest for non-payment either by the protest for non-acceptance, or by the death or failure of the person on whom the bill is drawn.

In case of failure of the acceptor before the bill becomes due, the holder may cause it to be protested, and have recourse to the other parties on the bill.

Of Re-exchange.

The French law states, that re-exchange results from the act of re-drawing, which is, when the holder of a bill protested draws another bill on the drawer, or one of the indorsers of the former bill, to reimburse himself for the principal of the bill protested, his expenses, and the new exchange which he pays (Art. 178). Re-exchange is regulated, with respect to the drawer, by the current rate of exchange at the place where the bill was payable on the place whence it was drawn; and with respect to the indorsers, by the rate of exchange at the place where the bill has been remitted or negotiated by them on the place where the reimbursement is to be effected.

The bill redrawn must be accompanied with a return account, which must contain (Art. 181), — 1. The amount of the bill protested. 2. The expenses of protest, and of other lawful charges, such as banker's commission, brokerage, stamp-duties, and postage of letters. 3. It must mention the name of the person on whom the bill for reimbursement is drawn, and the rate of exchange at which it is negotiated. 4. It must be certified to by an exchange agent, or, in places where there are no exchange agents, it must be certified by two merchants. 5. It must be accompanied with the bill of exchange protested, the protest, or a certified copy of it. 6. In case the bill for reimbursement be drawn on one of the indorsers, it must be accompanied, besides, with a certificate attesting the rate of exchange at the place where the bill protested was payable on the place whence it was drawn.

Art. 182. There can be only one return account made on the same bill of exchange, and this return account is reimbursed from indorser to indorser, and finally by the drawer. The re-exchanges cannot be accumulated. Each indorser, as well as the drawer, is charged with only one. Interest on the principal of the bill of exchange protested for non-payment, is due from the date of the protest. But interest on the expenses of protest, re-exchange, and other lawful charges, is due only from the day of judicial demand. No re-exchange is due, if the return account be not accompanied with the certificate of an exchange agent, or of two merchants, as prescribed.

The law of Germany provides (Art. 50) that the holder of a bill protested for non-payment has the right to claim, — 1. The principal sum of the bill, together with six per cent. interest per year, from the day of maturity. 2. The cost of protest and other expenses. 3. A commission of one third ($\frac{1}{3}$) per cent.

These items must be paid at the rate of exchange which exists on a bill at sight between the place of payment and the domicile of the person who is bound to reimburse; and if there exists no rate of exchange on the same place, the city next to it on which a course of exchange exists is to be taken.

The rate of exchange must be certified to, if the person liable desire it, by an authorized list of the rates of exchange, or by a broker, duly sworn, or in case of the absence of such an one, by the attestation of two merchants.

An indorser who has redeemed a bill or received the same as a remittance, is entitled to demand of an antecedent indorser, or from the drawer, — 1. The sum paid by him or made good by a remittance, besides six per cent. interest from the day of payment. 2. The expenses which he has incurred. 3. A commission of one third ($\frac{1}{3}$) per cent.

These items must be paid, if the party to whom recourse is had live at a different place from that of the claimant, at that rate of exchange which a bill at sight bears from the domicile of the claimant on the domicile of the party liable; and if there exist no course of exchange between these two places, then the place next to that of the party liable is to be substituted. The rate of exchange must be certified to, as indicated before. But if recourse be taken against a person in a foreign place, where the law allows greater damages, such damages are allowed to be taken.

The claimant may draw a bill, for the amount of his claims, upon the party against whom he claims, and he may then add the broker's commission for the re-exchange and the stamp-taxes. This bill of re-exchange must be payable at sight and drawn directly. But the party against whom recourse is had is not obliged to pay, unless the original bill, the protest, and the receipted return-account be delivered to him. Every indorser who has satisfied one of the indorsers subsequent to him, may erase his own indorsement and that of subsequent parties.

The drawer of the bill of re-exchange has the choice, either to send at once with the bill the vouchers for his return-account, or to make other arrangements for having them in proper time at the place, to be delivered up at the presentation of the bill of re-exchange. (See Art. 50 – 55.)

Of Acceptance and Payment supra Protest.

The German law (Art. 56) provides that, in case there is a person designated in the bill to whom application should be made, if the drawee refuse acceptance (which is expressed by the words, "In case of need, with Mr. —," in French, "Au besoin à M. —," and in German, "Im Nothfall bei H. —"), the holder is bound to apply to these persons before he can demand security from the other parties; and in case there are several such addresses, that person must be preferred by whose payment the greatest number of persons will be discharged.

This address, in case of need, is generally written at the foot of the bill, and it is customary, in all countries except Russia, to add only the initials of the person who makes it; but the Russian law requires that the drawer or indorser should write this address with his own hand.

The German law (Art. 57, 58) further provides, that the holder is **not** bound to admit the acceptance *supra protest* (in German called *Ehrenannahme*, in French *l'acceptation par intervention*) by any other persons than those designated. The person who accepts *supra protest*, or for honor, is bound to get the protest for non-acceptance delivered to him, and pay the cost thereof, and to have his acceptance for honor noted in a postscript. He is further bound to send notice to the person for whose honor he accepts, and to send this notice, together with the protest within two days after the day of protest, by mail. If he omit so to do, he is responsible for all the damages arising from this neglect.

If the acceptor for honor omits to state for whose honor he accepts, the drawer is taken to be the person honored.

The acceptor for honor becomes liable to all the parties that follow the honored person, according to the laws on bills; but he is discharged from this liability, if the bill is not presented to him, at the latest, on the second day after the day of payment.

Art. 61. If the bill has been accepted *supra protest*, by a person designated in case of need, or by a volunteer acceptor for honor, the holder and the indorsers subsequent to the person honored have no right of recourse for security. But the person for whose honor it has been accepted and his antecedent parties may demand such security.

The French law (Art. 126 - 128) provides, that, at the time of the protest for non-acceptance, the bill may be accepted by a third person, for the honor of the drawer, or one of the indorsers.

The acceptance *supra protest* is mentioned in the protest itself, and is signed by the acceptor, who is bound to notify, without delay, his acceptance to the person for whose honor it was made. The holder of the bill retains all his rights against the drawer and indorsers, on account of the non-acceptance by the person on whom the bill was drawn, notwithstanding any acceptance *supra protest*.

The Russian law does not permit the drawee to accept *supra protest* for the honor of the drawer, except the bill be drawn for account of a third person.

The laws of Spain and Portugal expressly provide that there is no difference between persons designated in case of need, and volunteer acceptors, and that he shall be preferred by whose acceptance the greatest number of persons are relieved.

Payment supra Protest (French, "Païement par Intervention"; German, "Ehrenzahlung").

The law of Germany requires (Art. 62) that, if the drawee does not pay, the holder shall present the bill, at latest on the second secular day after the day of payment, to the persons designated in case of need, and to the acceptor *supra protest*, and have the result of it noted in the protest for non-payment, or in a postscript to it. If he omits so to do, he loses his right of recourse against the person designated in case of need, or the person for whose honor it has been accepted, and the parties subsequent to them.

If the holder refuses payment for honor, offered by a third party, the holder loses his right of recourse against the parties subsequent to the person honored.

The party who pays for honor has a right to demand the delivery up to him of the protest for non-payment, upon his paying the cost of it; and he succeeds to the rights of the holder against the person honored, his antecedent indorsers, and the acceptor.

The French law (Art. 158) provides, that a bill protested for non-payment may be paid by any intervening person, for the honor of the drawer, or one of the indorsers.

The intervention and the payment must be stated in the protest, or at the end of it; and he who pays a bill *supra protest* is substituted in the rights of the holder, and bound to observe the same formalities. If the payment be made for the account of the drawer, all the indorsers are discharged. If it be made for an indorser, all the subsequent indorsers are discharged.

He whose payment will discharge the greatest number of parties must be preferred, and if he on whom the bill was originally drawn, and against whom protest for non-acceptance has been made, presents himself to pay it, he shall be preferred to all others.

Of Guaranty.

The French law provides (Art. 141) that the payment of a bill of exchange, independently of the acceptance and the indorsement, may be secured by a written guaranty (*par un aval*), which may be given by a third person, either on the bill itself or in a separate instrument of writing. The person thus becoming guarantee is jointly and severally bound with the drawers and indorsers, saving any different stipulations between the parties.

This kind of guaranty is very common in France, and is generally written at the bottom of the bill, but may be given separately, and is binding upon the party though given for the debt of a third person, and though no consideration should be mentioned.

By the law of Germany, the guaranty must be written on the bill itself, which is expressed by signing the name and adding the words "par aval," or "als Bürge," to it. Such a guarantor is liable according to the laws on bills, and in case of payment by him, he has the right of recourse against the antecedent parties according to the same law.

The laws of Holland and Spain agree with the French law, and allow the guaranty to be written in a separate instrument.

Promissory Notes.

What are called promissory notes in the English law, are called in Germany "Dry" or "own" bills of exchange, *Eigne* or *Trockene Wechsel* (*Cambia sicca*), so called, as some suppose, originally in Venice and Genoa, because it was not allowed there to send them over the sea, or, as others suppose, because they carried no interest. In France they are called *billets à ordre, bons, vaglia*.

In order to make these *dry bills* of exchange, or promissory notes, subject to the laws on bills, it is required in Germany, that,— 1. The word "bill of exchange" (*Wechsel*) be contained in the instrument. 2. The statement of the sum to be paid. 3. The name of the person or firm to whom payment is to be made. 4. The statement of the time when payment is to be made. 5. The signature of the drawer or maker. 6. The statement of the place and date of month and year when and where it was made.

The place of the making of the note is taken for the place of payment, unless another place has been designated, and also as the domicile of the maker. The claim against the maker is lost after three years from the date of maturity.

In regard to indorsement, notice, protest, etc., the same laws apply to promissory notes that we have stated in regard to bills of exchange.

If a note is made payable at a place different from that of its date, demand of payment must be made at that place, and protest be made there in case of non-payment. If the proper protest is neglected at the place designated for payment, the maker and indorsers are discharged from their liability, according to the laws on bills. Promissory notes cannot be made payable with interest, or a certain time after notice.

In France, promissory notes must be dated, and must mention the sum to be paid, the name of the person to whose order they are made, the time of payment, the value received, whether in money, in merchandise, on account, or in any other manner (Art. 188).

All the provisions relative to bills of exchange, concerning the maturity of the bill, the indorsement, the joint and several responsibility, the guaranty, the payment, the payment *supra protest*, the protest, the duties and rights of the holder, and the reëchange or expenses, are applicable to promissory notes.

Of Limitations of Actions.

The French law provides (Art. 189) that all actions relative to bills of exchange and promissory notes, signed by merchants, traders or bankers, or for commercial transactions, are limited to five years, counting from the day of the protest, or from that of the last judicial proceeding if there has been no judgment, or if the debt has not been acknowledged by a separate instrument in writing.

Nevertheless, persons presumed to be debtors shall be bound, if re-

quired, to declare under oath that they are no longer indebted; and their widows, heirs, or assigns, that they verily believe that nothing remains due.

The following countries have adopted the law of France, in regard to the limitation of actions on bills of exchange:—

Egypt, Algiers, Belgium, Geneva, Greece, Hayti (which, however, has fixed *six* months as the shortest period for an action of recourse), the Ionian Islands, the Papal States, Lausanne, Lucca, Luxemburg, Montevideo, Parma, Poland, Sardinia, the Kingdom of the Two Sicilies, Tessin, Tuscany, Turkey, Wallachia, Wallis.

The German law provides that the claims against the acceptor are limited to three years from the day of maturity (Art. 77), and that the right of recourse of the holder and indorser against the drawer and the other antecedent parties is barred,—

1. In three months, if the bill is payable in Europe, excepting Iceland and the Faroe Islands, or, respectively, if the indorser who takes recourse lives there.

2. In six months, if the bill is payable in the countries on the coasts of Asia and Africa along the Mediterranean and the Black Sea, or in the islands belonging to them.

3. In eighteen months, if the bill is payable, or the plaintiff lives, in any other country out of Europe, or in Iceland or the Faroe Islands.

The time of limitation begins to run against the holder from the day of protest, and against the suing indorser from the day of his having made payment, or from the day of his having been cited or summoned into court by a subsequent indorsee.

It is further provided, that if the liabilities of the drawer or acceptor, according to the laws on bills, have become extinct, either by limitation or by the omission of some act required by the law on bills, they remain bound to the holder only in so far as they would gain an advantage by his loss.

But such a claim cannot be made against the indorsers, whose liabilities have become extinct by the law on bills.

But the above expression of gaining an advantage is understood to mean a *positive* advantage, so that the proof that each person paid value to his indorser, or that the neglect of some prescribed act caused no damage or injury, is not sufficient. It is necessary, in such an action, to prove, for instance, that the drawer issued the bill for value received, without making over funds to the drawee to cover the bill, or without having a demand against him or a right to draw the bill.

In Holland the law of limitation, for all bills payable there, runs ten years.

In Mexico, according to the law of Bilbao, the right of action against drawer and indorsers is limited to four years.

In Norway all claims become extinct after six months.

The Russian law limits the right of action on bills to two years.

The Spanish law limits the right of action on bills of exchange to four years, and against indorsers of promissory notes to two months.

In Zurich the law limits the right of action against the acceptor to one year, and against the indorsers to three months.

The law of St. Gallen, which also prevails in Berne and Lucerne, limits all right of claim against the drawer and indorsers of bills of exchange to three and four months; but on promissory notes the right of action, according to the law on bills, is limited to one year.

Forged Bills.

The German law provides (Art. 75) that, although the signature of the drawer of a bill be forged, the genuine acceptance and indorsements shall have effect according to the law on bills.

And (Art. 76) if the acceptance or indorsements be forged, the indorsers and the drawer, whose signatures are genuine, are held liable.

The French law holds the acceptor liable, in case the drawer's signature is not genuine; and this rule applies also to an acceptor for honor.

But according to the Spanish and Russian laws, the drawee who has accepted a forged bill is not obliged to pay it.

If it be not the signature, but the sum to be paid, which is altered, and if the drawee has accepted or paid a larger sum than was specified in the letter of advice, then the drawee can claim the sum overpaid only from the author of the fraud. But those indorsers who indorse the bill after the forgery are liable to the holder for the forged sum.

The French law also will hold the drawer answerable for the whole altered sum, if he have drawn without giving advice to the drawee.

The laws of Holland and Portugal hold the indorsements following the forged indorsement to be of no force.

Lost Bills.

The German law provides (Art. 73) that the owner of a lost bill of exchange may move the court at the place of payment to fix a time within which the lost bill shall be presented or be outlawed. When the court shall have fixed this time, the owner of the bill may demand payment from the acceptor, on giving him security. Without such security, the acceptor can be only compelled to deposit the sum due in court, or with some other authority empowered to receive deposits.

The French law provides, that, in case of the loss of a bill *not accepted*, the owner may sue for the payment on the second or third bill; and if the bill lost be *accepted*, the payment of it cannot be required on a second, etc., except by the order of the judge, and on giving security.

If he who has lost a bill of exchange, whether accepted or not, cannot present a second, third, etc. of the set, he may demand the payment of the bill lost, and obtain it by order of a judge, on proving his property therein by his books, and giving security. In case of refusal of payment, on a demand made in the two last-mentioned cases, the owner of the lost bill preserves all his rights by a regular protest, which must be made the next day after the bill lost became due. It must be notified to the drawer and indorsers, in the forms and within the time prescribed for the notice of protest.

THE
LAW OF BILLS OF EXCHANGE AND PROMISSORY NOTES
IN
THE UNITED STATES AND ENGLAND.

CHAPTER I.

ON THE ORIGIN AND NATURE OF BILLS OF EXCHANGE.

THE most important branch of the practice of a notary public is connected with bills of exchange and promissory notes. It is, therefore, highly desirable for him to be acquainted with the laws and regulations which govern this class of commercial instruments. We can here point out only the leading and fundamental principles of law which apply to them; but they will answer the wants of the ordinary purposes of business.

Without entering into any investigation regarding the origin of bills of exchange, which has been assigned, by different writers, to different countries and causes, we may say that it is now the most generally adopted opinion, that they originated in the twelfth or thirteenth century, in Italy, at the public fairs, which received a marked importance in commerce, through the Crusades. The money-changers transacted their principal business at the public fairs in the principal cities, and bills or orders for the payment of money at a distant place were at first drawn only from one fair to another, and were called *cambia regularia*. But when commerce increased, through the Hanseatic League, and extended to places where no public fairs were held, bills of exchange were also drawn upon such other places, and these bills were called *cambia irregularia*.

The oldest copy of a formal bill of exchange known at present, is one dated at Milan on the 9th of March, 1325, and runs in the original as follows:—

"Pagate per questa prima litera [lettera] a dì IX. Ottobre a Luca de Goro Lib. XLV. Sono per la valuta qui da Masco Reno, al tempo il pagate e ponete a mio conto e R. che Christo vi guarde Bonromeo de Bonromei de Milano IX. de' Marzo, 1325."

"Pay for this first bill of exchange, on the 9th of October, to Luca de Goro XLV. Livres; they are for value received here from Masco Reno; at the time of maturity pay the same and pass it to my account,

and thanking you may Christ protect you, Bonromeo de Bonromei of Milan, the 9th of March, 1325."

In England reference was made, in the statute of 5 Rich. II. ch. 2, to the drawing of foreign bills, which was in the year 1381. The legal properties of bills in England are derived from the custom of merchants, but promissory notes are said to derive their properties from the act of Parliament of the 3d and 4th Anne, c. 9, which puts them on the same footing with inland bills.

In the United States, bills of exchange and promissory notes are recognized in law as negotiable instruments, with all the properties usually attached to them by the custom of merchants. The statute laws in many States especially provide for their negotiability; but in States where this is not the case, the same customary properties would be held to attach to them.

Name and Definition.

A bill of exchange, in common speech called a draft, is an open letter of request, addressed by one person to a second, desiring him to pay a sum of money to a third, or to any other to whom that third person shall order it to be paid; or it may be made payable to bearer. For instance:—

" *Boston, 1st January, 1852.*

"Exchange for £ 100.

"Sixty days after sight of this bill of exchange, pay to the order of George Green

One Hundred Pounds Sterling,
value received, and place the same to account, as advised by
CHARLES WHITE."

"To Mr. Jacob Brown, London."

Parties.

The person who writes the request is called the *drawer*, and he to whom it is addressed is called the *drawee*; and if he agrees or consents to pay the money signified in the bill, he is said to *accept* it, and is then called the *acceptor*. The third person, to whom the money is payable, is called the *payee*. In the above instance, Charles White is called the *drawer*, Jacob Brown the *drawee*, and after he has consented or accepted to pay it, the *acceptor*, and George Green is called the *payee*. If it is made payable to him or order, or to the order of him, as above, and he then assigns it to another person, to whom the money is to be paid, by writing his name on the back of the bill (which is called indorsing the bill, and the act itself an indorsement), he is then called an *indorser*. The person to whom he orders the money to be paid is called the *indorsee* or *holder*, and if this one again assigns the bill to another person, the latter is called the indorsee or holder, and the other the second indorser; and every other person, who successively puts his name on the back of the bill, is called an indorser, and the person to whom it is last delivered is called the holder.

If in the above-cited instance George Green should write on the back of the bill, "Pay to the order of William Baker," signing his name beneath, "George Green," the latter would be called an indorser, and William Baker would be called indorsee or holder; and if Baker, again, should sign his name under that of Green, and order the contents of the bill to be paid to somebody else, Baker would be called an indorser, and the person designated by him the indorsee or holder, and so on.

Blank Indorsements.

It is very common for parties to sign simply their names on the back of the bill, without designating to whom the contents shall be paid. This is called a "blank indorsement," and whosoever holds the bill may write above the signature that it is payable to his order. For instance, if George Green, the original payee in the above-specified bill, had simply written his name on the back of it, and had delivered it to William Baker, and Baker again had simply put his name on the back under that of Green, and had delivered the bill to one J. Brown, the latter would be the holder, and might write over the signature of Green, "Pay to the order of William Baker," and over the signature of Baker, "Pay to the order of J. Brown."

Indorsement in full.

Although these blank indorsements are very common, it would be desirable, and it is highly to be recommended, that each indorser should write in full, over his name, the place of his residence, the date, and the name of his indorsee, that is, the name of the person to whom he assigns the bill. Thus, in the above instance, if George Green resided in New York, he should write on the back, over his signature:—

"New York, January 3d, 1852.

"Pay to the order of William Baker.

(Signed,)

GEORGE GREEN."

And in a similar way the successive indorsers should do.

This way of indorsing has two advantages. In the first place, if the bill should be lost or stolen, with a blank indorsement on it, any person who finds or holds it might fill up the blank in his own name, and demand payment; whereas, if it were indorsed in full, the finder or holder would have to forge the name of the indorsee before he could get payment. In the second place, if the bill should be protested for non-acceptance or non-payment, the holder would know at once the places of residence of the different indorsers, and be able to give them due notice without delay.

Forms.

When bills of exchange are drawn on a place at a distance, and in a foreign country, it is customary to give a set of three bills of the same tenor, that they may be sent separately, by different mails, so that in case one should get lost, one of the others might reach the person concerned,

safely. One of the common forms of a bill of this kind would be substantially as follows:—

“*Boston, July 1st, 1852.*”

“Exchange for £ 1000.

“Sixty days after sight [or after date, or at sight, or on demand], pay this my *first* bill of exchange (second and third of the same tenor and date not paid) to the order of Mr. — One Thousand Pounds Sterling, value received, and place the same to my account, as advised by

(Signed,)

PAUL JONES.”

“To Messrs. Green & Co., London.”

The second bill of the same set would be in every respect the same with the first, except that it would read, “pay this my *second* bill of exchange, first and third, &c. not paid.”

And the third bill would run, “Pay this my *third* bill of exchange, first and second, &c. not paid.”

Different Kinds.

Bills of exchange are divided into *foreign* bills of exchange and *inland* bills of exchange, because the rights of proceeding and remedies thereon are not uniformly governed by the same rules and regulations. A bill of exchange is called a *foreign* bill, when it is drawn in one state or country upon a person residing in a foreign state or country, as, for instance, when drawn by a person in one of the United States of America upon a person resident in England, and payable by the latter. And it is called an *inland* bill (or a domestic bill), when both the drawer and drawee reside in the same State or country; for instance, when the bill is drawn in Boston upon a person residing in Salem, both places being in the State of Massachusetts.

The different States of the United States are considered as foreign to each other, so that a bill drawn in Massachusetts upon a person in New York is considered a foreign bill. (*Miller v. Hackley*, 5 Johns. R. 375; *The Phoenix Bank v. Hussey*, 12 Pick. R. 483; *Buckner v. Finley*, 2 Peters, R. 586.)

In like manner a bill drawn in England upon Scotland or Ireland is considered a foreign bill. (*Mahoney v. Ashlin*, 2 Barn. & Adolph. R. 478, 482.)

CHAPTER II.

REQUISITES OF BILLS OF EXCHANGE.

The Form.

A BILL is not confined to any set form of words, and it is not essential that the very language of the formulary which has been given above

should be used. It is only requisite that it be in writing, and contain an order or direction by one person to another person, to pay money to a third person, absolutely and at all events.

The writing may be in pencil, as well as in ink, nor is it necessary that the whole instrument be in writing; the general formulary is generally printed, but the signatures must be in writing. If a person should order another person to deliver a particular sum of money to A. B., or to be accountable or responsible for a particular sum of money to A. B., it would constitute a bill of exchange. So if the expression should be "Please to pay," or "I request you to pay or deliver," it would be a good bill, because these expressions are mere words of politeness, in the place of an absolute order. But if the language used necessarily or naturally imports a request, as a favor, and not as a matter of right, it would not be a good bill. So it has been held in England that a note addressed by A to B in these words: "Mr. Little, please to let the bearer have £ 7, and place it to my account, and you will much oblige your humble servant, J. Slackford," — was not a bill of exchange. (*Little v. Slackford*, 1 Mood. & M. 171.) However, where the language used is susceptible of two interpretations, the true rule seems to be, that the mere drawing of a bill is deemed to be the demand of a right, and not the asking of a favor, and to deem it a favor only when the language used repels, in an unequivocal manner, the notion that it is claimed as a right. (Story on Bills of Exchange, § 33.)

If the word "at," instead of "to," should be put before the name of the drawee, — e. g. "Two months after date pay to the order of J. J. £ 78, value received, T. S. At Messrs. John Morson, & Co.," — it might be held a bill of exchange (*Shuttleworth v. Stevens*, 1 Campb. 407), or a promissory note, at the election of the holder. So in a case where the instrument was as follows: "May 20, 1813. Two months after date pay to me or my order the sum of £ 30. W. S. Payable at No. 1, Wilmot Street, opposite the Lamb, Bethnal Green, London," — and was accepted by the person residing at that place, it was held to be a bill of exchange. (*Gray v. Wilmer*, 8 Taunt. 739.) The rule is, that, where an instrument is so framed as to admit of reasonable doubt whether it was intended for a bill or a note, the holder is at liberty to treat it either as a bill or as a note, as against the maker. So in the following case, where the instrument was in these words: —

"London, 5th August, 1826. Three months after date, I promise John Bury or order £ 44, value received.

"JOHN BURY."

"J. B. Gruthrot, 35 Montague Place, Bedford Square."

Gruthrot's name was written across it. The court held it to be a note, but at the same time laid down the above rule, as between the holder and the maker. (*Edis v. Bury*, 6 Barn. & Gr. 433.)

It does not seem necessary, that the whole of the bill be written on one and the same side of a paper, or on one and the same paper; it may be written in part on one paper, and in part on another separate and detached paper, provided the writing on each be done at one and the

same time, and both parts be intended to form one entire contract (Story on Bills of Exchange, § 34, and note 1.) If there should be no room left for indorsements, a paper might be affixed to the original bill for this purpose, but it would require proof of the fact that this paper formed a part of the bill.

It often happens, that there are but two parties to a bill, which is the case when the drawer makes the bill payable to his own order, and when he then indorses it, the indorsee becomes in fact the payee. And if no drawee should be named, but the bill be made payable at a particular place, and the person living at that place should accept it, he would be held answerable as acceptor.

Negotiability.

In order to make a bill negotiable, it must be made payable to the payee and to *his order* or *assigns*, or to *bearer*. The common form, as stated before, is "to the order of A. B.," or "to A. B. or order," or "to bearer." It would be advisable to adopt the form, "to A. B. or his order." If no expression be used, which gives to the payee the power of transfer, it is nevertheless a bill.

If the payee of a negotiable bill indorse it in blank, it is transferable by mere delivery, in the same manner as if it were payable to bearer.

If the name of the payee be left in blank, — e. g. "Pay to ——— or order," — any holder may insert his name, and then indorse it; the effect would be the same as if it were made payable to bearer.

So, also, if the name of the payee is fictitious, and the bill be indorsed in the name of this fictitious person, a holder who was ignorant of this fact when he took it may regard it as a bill payable to bearer, and may sue the drawer, and also the acceptor, if the latter knew that the name of the payee was fictitious.

Value Received.

The words "value received" are generally inserted in a bill, but it is not necessary, for the law in cases of negotiable instruments of this kind presumes it.

Several Drawees.

A bill addressed to "A, or in his absence to B," is valid, and will, if accepted by either, bind him. If a bill is intended to be accepted by two persons, it should be addressed to both; otherwise, although accepted by both, it will bind only the person to whom it is addressed as acceptor. If a bill is drawn upon A, B, and C, it may be accepted by A and B only, and it will bind them. (Story on Bills of Exchange, § 58.)

On the Continent of Europe it is not unfrequent to put, beside the name of the principal drawee, the name of another person, to whom application may be made for acceptance or payment, if the first-named drawee should be absent or refuse payment, which is generally done in this form: "In case of need, apply to Mr. ——— at ———" (in French, "Au besoin, chez M. ———, à ———"; in German, "Im Nothfall bei

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Herrn —, in —"). The holder of the bill is obliged to follow the direction, if the first drawee should be absent or refuse.

The Words "Put it to Account."

Although it is common to use the words, at the end of the bill, "and put it to my account," or "to your account," or "and put it to the account of A. B.," or "put it to account as per advice" or "as advised by," these words are not essential, but are used only as a matter of convenience. If the drawer should be indebted to the drawee, he would say, "and put it to my account"; if, on the other hand, the drawee should be indebted to the drawer, he would say, "and put it to your account"; and if the bill were drawn on account of a third person, he would say, "and put it to the account of A. B."

Statement of Advice.

If the bill concludes with the words "as per advice," then the drawee is not obliged to accept or pay, without receiving further directions or advice, and if he do so, he does it at his own peril. If the bill conclude with the words, "without advice," or "with or without advice," then the drawee may accept or pay without being further instructed by the drawer.

But the words may be altogether omitted, without impairing the validity of the bill.

The Competency and Capacity of Parties.

We may generally state, that all persons who are legally capable of entering into any other contract are capable of becoming parties to a bill, or in other words, all persons of full age and sound mind, both males and females, may draw, hold, indorse, and accept bills.

Partners.

In regard to partners, the signature of the firm must be put to the bill, either in case of indorsement, drawing, or accepting; and each partner has complete authority to use it; and when so used, the bill is deemed to be on partnership account, unless it appear on the face of the bill, or it can be proved that the party taking it had full knowledge that the bill was drawn, indorsed, or accepted, not for partnership, but individual purposes.

Agents.

Agents, if empowered for the purpose, either expressly or tacitly, may bind their principals to the full extent that their principals might do for themselves, provided that they do not exceed the scope of their authority. But if agents would bind their principals, they must draw, indorse, or accept the bills in the name of their principals, and not in their own name. The most proper way of doing this, is in the following form, supposing A. Green to be the principal, and B. White, the agent:—

"A. Green,
by B. White, his Agent."

A number of other forms may be used; care should be taken, however, by the agent, if he means to exempt himself from personal responsibility, to use clear and explicit words to show that intention, and to express on the contract the quality in which he acts; otherwise he does not bind the party who employs him, but binds himself. A great many lawsuits have arisen in consequence of an indistinct and loose way of stating the quality in which a person signs a bill, and different decisions in different States have been the consequence.

The following forms, used by agents, have been adjudged as binding the principal in cases of negotiable paper:—

A note made in these words: "I promise to pay," etc., and signed, "Pro. Wm. Gill, J. S. Colburn." Gill was held liable as principal, and not Colburn, the agent. *Long v. Colburn*, 11 Mass. 97.

"I, the subscriber, Treasurer of the Dorchester Turnpike Corporation, promise," etc. Signed, "Gardner L. Chandler, Treasurer of the Dorchester Turnpike Corporation." The corporation was held liable. *Mann v. Chandler*, 9 Mass. R. 335.

A bill drawn on Darling, "Agent of the Commission Company," and accepted thus: "Accepted, Noyes Darling, Agent C. C." The company was held liable, and not the agent. *Shelton v. Darling*, 2 Conn. R. 435.

It is understood in all these cases that the agent has sufficient authority from his principal to draw or accept bills, or make notes. If the agent, however, has no authority, then the agent himself is liable on the instrument. See *Ballou v. Talbot*, 16 Mass. 461; *Rossiter v. Rossiter* 8 Wend. 494.

Payment in Money.

A bill of exchange must be for the payment of *money*, but it matters not what denomination the money specified has, whether it is called dollars, francs, pounds sterling, Marc Banco, or any other currency, because the value of each kind can be ascertained.

In England negotiable paper must be for the payment of money in specie, and not in bank-notes, and it may be said that the same rule obtains generally in the United States of America, although there are some cases in some States which have extended this rule. (*Kent's Comm. Lect. 44*, pp. 45 and 46.)

Hence an order to pay money "in good East India bonds," or to pay "in cash or Bank of England notes," or "in foreign bills," or "in goods," is not a negotiable bill.

In New York it has been held that a note payable "in York State bills or specie," was a negotiable paper. (*Keith v. Jones*, 9 Johns. R. 120.) So also a note "payable in bank-notes current in the city of New York"; and the court remarked, that it would have been a note under the statute if payable in bank-notes generally. (*Judah v. Harris*, 19 Johns. R. 144.)

But a note payable "in Pennsylvania paper currency, or New York, to be current in the State of Pennsylvania or the State of New York," was held in New York not to be a note for the payment of money, within

the statute, because the court say that they may take notice, officially, of their own bank paper being regarded as cash, but not of the value of the paper currency of other States. *Leiber v. Goodrich*, 5 Cowen, 136.

A note made payable in New York in Canada money, is not a negotiable promissory note within the statute. *Thompson v. Sloan*, 23 Wendell, 71.

In Pennsylvania it was held that a note payable to A. B. or order "in bank-notes of the chartered banks of Pennsylvania," was not a negotiable note. *M'Cormick v. Trotter*, 10 Serg. & Rawle, 94.

In New York it was held that a check, drawn in that State, upon a bank in Mississippi, payable in current notes, is not negotiable. *Little v. The Phoenix Bank*, 7 Hill's R. 359.

A note payable to the bearer *in goods* is not negotiable. *Clark v. King*, 2 Mass. 524. Nor a note payable in "foreign bills." *Jones v. Fales*, 4 Mass. 245.

It is not necessary that the sum payable should be expressed in words. It is sufficient, if it be in figures. But it is necessary that the order be for a specific amount.

A bill or note for a given sum, "and for whatever else may be due to the payee," is not, even between the original parties, a bill or note. (Bayley on Bills, p. 12.)

So an order for \$ 1,000, "or what might be due after deducting all advances and expenses," is not negotiable. *Cushman v. Haynes*, 20 Pick. 132.

Payable absolutely.

A bill must also be payable absolutely and at all events, and the payment must not be made to depend on any uncertainty or contingency, or it will not be considered a bill of exchange.

Thus a bill drawn payable "provided the terms mentioned in certain letters shall be complied with"; or "out of rents"; or "on the sale of produce when sold"; or "when the drawer shall come of age"; or "at thirty days after the ship A. shall arrive at B."; or "when the drawer shall marry"; or "when freight becomes due"; or "if the money be not paid at a certain day by a third party"; or "provided a certain act is done or not done"; or "on the balance of account between the parties"; or "provided, at the maturity of the bill, I am living"; or "when certain carriages are sold by payee"; — in all these and similar cases the instrument is not considered a bill of exchange. (Bayley on Bills, pp. 14–17, and Story on Bills, § 46.)

But where payment only seemingly depends upon a contingency, but in reality is certain and at all events, although the particular time when it will arrive is uncertain, it will be a good bill of exchange in law; e. g. a bill payable at the death of the drawer or of another person, or at a fixed time afterwards.

A note payable "provided the ship Mary arrives," etc. "free from capture and condemnation," is not negotiable. *Coolidge v. Ruggles*, 15 Mass. 387.

CHAPTER III.

PRESENTMENT OF BILLS FOR ACCEPTANCE.

Contract of the Holder.

THE person who receives a bill or note thereby contracts with every other party to the bill or note who would be entitled to bring an action on paying it, to present it in proper time to the drawee for acceptance when acceptance is necessary, and to the acceptor for payment when the bill shall have arrived at its maturity and be payable; to allow no extra time for payment to the acceptor; and to give notice, in a reasonable time, and without delay, to every such person, of a failure in procuring a proper acceptance or payment. Any default or neglect in any of these respects will discharge every such person from responsibility on account of a non-acceptance or non-payment; and will make it operate generally as a satisfaction of any debt, demand, or value for which it was given. (Greenleaf on Evidence, Vol. II. § 175; Wallace v. McConnell, 13 Peters's R. 136; Story on Bills, § 227.)

When Necessary.

If a bill is payable at sight, or in so many days after sight or after demand, or upon any other contingency, or after a certain event, a presentment of the bill to the drawee for acceptance must be made, in order to fix the period of payment. But if the bill is payable *on demand*, or payable at a certain number of days after date, or after any other certain event, it need not be presented merely for acceptance, but only for payment; but if it be presented for acceptance, and acceptance be refused, the holder must give notice of the dishonor, in the same manner as if the bill were payable at sight or after sight. (Story on Bills, § 112, 227, 228.) It is, however, usual and advisable to present a bill drawn payable a certain number of days after date, for acceptance.

By whom to be presented.

The presentment for acceptance must be made by the holder or his agent. If the bill is presented by one not authorized to hold the bill, the drawee may not be bound to accept it; but if he does accept it, it is available to the holder.

A presentment by any person in possession of a bill or note *bonâ fide* is sufficient, and no letter of attorney or other writing from the proprietor of the bill or note is necessary to give an authority to another person to make a presentment. (Freeman v. Boynton, 7 Mass. R. 483; Bank of Utica v. Smith, 18 Johns. R. 230.)

And a person's having a bill or note in his possession on the day and at the place of payment is presumptive evidence of authority to demand payment. (Agnew v. Bank of Gettysburg, 2 Har. & Gill, 478.)

To whom to be presented.

The bill must be presented to the drawee, or his authorized agent. If it is drawn on partners, a presentment to one of them is sufficient; but if drawn on several persons not partners, it has been said that it should be presented to each; and if one of the drawees should refuse to accept, the holder would not be bound to take the acceptance of the others alone. (Story on Bills, § 229.)

The death, bankruptcy, insolvency, or absconding of the drawee will not absolve or excuse the holder from presenting the bill. If he is dead, it should be presented to his personal representatives, his executor or administrator, if any there be, and if not, at his last domicile; and if he has absconded, it should be presented at his last domicile or place of business. (Chitty and Hulme on Bills, pp. 279, 280; *Groton v. Dalheim*, 6 Greenl. 476.) If the holder, upon presentment, should ascertain that the drawee is a married woman, or a person under age or otherwise incapable of contracting, he is not bound to take their acceptance, but may treat the bill as dishonored. (Chitty on Bills, ch. 7, p. 310.)

Time of Presentment.

As regards the time within which a bill ought to be presented for acceptance, no definite rule can be laid down, and the law says only, that it must be presented within a reasonable time; but what this reasonable time is, depends upon the peculiar circumstances of each case. If the holder keeps a bill, payable at sight, or payable a certain number of days after sight, in his own possession for an unreasonable time, he makes the bill his own, and loses his right of claim upon the drawer and indorsers. But if the bill (whether it be foreign or domestic) is kept in circulation, and not held by any one holder an unreasonable time, no particular time can be assigned in which it ought to be presented.

It is not necessary to send a bill, payable after sight, by the most direct route to the place where it is payable, when it is the common course of trade to send such bills by an indirect route. Thus, where a bill of exchange was drawn in Havana upon London, payable at sixty days after sight, it was held that the holder need not send it directly to London, but might send it to the United States for sale, such being the common course of trade. (*Wallace v. Agry*, 4 Mason, 336.) So, where a bill was drawn at New Orleans on Liverpool, it was held, that it might be sent to New York first for sale, that being the usual course of business. (*Bolton v. Harrod*, 9 Martin, 326.)

But if the holder of a foreign bill carry it to the place where it is payable, he ought to present it for acceptance without delay. (*Fernandez v. Lewis*, 1 McCord, 322.)

But if a bill, payable after sight, is negotiated, and thus sent to different places before it is presented for acceptance, the courts have held this delay allowable. (*Goupy v. Harden*, 7 Taunt. 159; *Gowan v. Jackson*, 20 Johns. R. 176.)

A presentment for acceptance or a demand of payment must also be

made at a *proper time*. No drawee is required to accept a bill on any day which is set apart, by laws or observances or usages of the country or place, for religious or other purposes, and which is not deemed a day for the transaction of secular business, such as Sunday, Fast or Thanksgiving day, the Fourth of July, or any other general holiday. Out of New England, Christmas and New Year's day are also generally regarded as holidays. The statutes of several States point out the days, which may be found under the statute laws appended.

And in all cases the presentment must be made at a *reasonable hour* of the day. If made at the place of business, it must be made within the usual business hours, or, at farthest, while some person is there who has authority to receive and answer the presentment. If made at the dwelling-house of the drawee, it may be made at any seasonable hour, while the family is up. (Chitty and Hulme on Bills, p. 454, 9th ed. ; Story on Bills, § 236.)

Place of Presentment.

As to the *proper place* where presentment for acceptance should be made, the general rule is, that it is the town or municipality of the domicile of the drawee, without any regard to its being drawn payable generally, or payable at a particular specified place. (Chitty and Hulme on Bills, pp. 365, 666, 9th ed. ; Story on Bills, § 235.) If the drawee dwells in one place, and has his place of business in another, whether it be in the same town or in another town, the bill may be presented for acceptance at either place, at the option of the holder. If the bill is addressed to the drawee at a place where he never lived, or if he has removed to another place, the presentment should be at the place of his actual domicile, if by diligent inquiries it can be ascertained ; and if it cannot be ascertained, or if the drawee has absconded, the bill may be treated as dishonored. (Chitty and Hulme on Bills, pp. 654, 655, 9th ed.)

It has been held, that if the drawee or maker of a note has moved out of the State of his former residence, either into a foreign country, or into another State, a presentment to him is not necessary. (*Magruder v. Bank of Washington*, 9 Wheat. R. 598 ; *Bayley on Bills*, pp. 198, 199.) If, however, an absent drawee has a known agent in the same place, the bill should be presented to the agent. (Story on Bills, § 235.) Or if he have still a place of business there, it should be presented there. But if he have neither, then it should be presented at his last place of abode, if it can be ascertained, and the bill is to be considered as dishonored.

In the case of the drawee's bankruptcy, it is not necessary to present a bill for acceptance to the assignees of his estate, because accepting bills forms no part of their duty.

CHAPTER IV.

ACCEPTANCE OF BILLS.

WHEN a bill is presented for acceptance, the drawee is entitled, if he desire it, to have at least twenty-four hours to consider whether he will accept the bill or not; and it is usual in such cases for the holder to leave the bill with him for that time. (Story on Bills, § 237.)

It is said by Bayley, Chap. VII. sect. 1, p. 218, "Upon a presentment for acceptance, the bill should be left with the drawee twenty-four hours, unless in the interim he either accept or declare a resolution not to accept." The English custom is, to leave the bill on one day, and to call for an answer on the next, without the holder being required to wait to the full end of twenty-four hours, for the holder is entitled to a decisive answer within that time. The French law, as we have seen, allows the drawee full twenty-four hours for consideration, and the German law requires an immediate answer.

Law of New York.

In New York it has been provided by statute, that, if the drawee refuses to return the bill, within twenty-four hours, to the holder, he shall and may be deemed to have accepted the bill. This same law has been adopted in Missouri, and it is highly desirable that the New York rule should be universally adopted. In States where no special law exists, and no custom has been established, the retaining of the bill by the drawee for a length of time, against the remonstrance of the holder, and the latter informing the drawee that he should consider the bill as accepted, unless he returned the bill, might perhaps be considered as an acceptance. But the mere detention of the bill would not amount to an acceptance.

If the drawee be a person little known, or if the holder do not feel assured that the bill will be safe with the drawee, it is not the usage in England to leave it, but the holder may leave a copy merely, because the leaving of the bill, in any case, may be looked upon merely as a matter of courtesy.

We shall refer to this subject farther below, when we come to speak of the different kinds of acceptance.

Nature of an Acceptance.

An acceptance is an agreement or engagement to comply with the order or request contained in the bill, or an engagement to pay the bill, according to the tenor of the acceptance, when due. When the drawee engages to pay the bill according to its tenor, it is called a *general* acceptance. But when the drawee agrees to pay the bill, with some qualification, limitation, or condition different from what is expressed on the face of the bill, or from what the law implies upon a general acceptance, it is called a *conditional* or *qualified* acceptance.

The act of accepting is generally done by the drawee writing across the face of the bill, "Accepted the ——" (date), and signing his name to it. The signing of the name must be done, either by the drawee himself, or by his authorized agent. But an acceptance, where it is not otherwise qualified or restrained by the local or statute law, may be either *verbal* or in *writing*, and may be either by express words or by reasonable implication. (Story on Bills, §§ 242, 243.)

The Law of England.

By the English law, the acceptance of a *foreign* bill may be verbal or in writing; but that of an inland bill must be in writing on the bill itself. The holder of a foreign bill may, however, refuse to take any acceptance except an absolute and unconditional one, in writing, upon the bill, and if this be refused, he may consider it dishonored. A *foreign* bill *already drawn* may be accepted also by a letter or collateral writing, or verbally, at any time even after the bill has been dishonored on non-acceptance. (See *Mahoney v. Ashlin et al.*, 2 Barn. & Adol. 478; *Bayley on Bills*, pp. 172–174; *Rees v. Warwick*, 2 Barn. & Ald. 113; *Billing v. Devaux*, 3 Man. & Grang. 565.) In this last case, the drawee of a foreign bill was held bound by a promise to accept in a letter to the drawer, which was written in ignorance of his death, and after it had become due and had been refused payment and protested for non-payment. The death of the drawer took place after the bill had become due, and before the date of the letter.

And a third person may avail himself of a parol acceptance, though he was not aware of it when he received the bill. (*Fairlee v. Herring*, 3 Bing. 629.) A promise to accept a bill already drawn, in a letter written by the drawee to a third person, not a party to the bill, amounts to an acceptance, and inures to the benefit of the drawers, and cannot be cancelled by such third person. (*Grant v. Hunt*, 1 Manning, Gr. & Scott, C. P. 45.)

Promise to accept a Non-existing Bill.

It was formerly an unsettled point in England, whether a promise to accept a non-existing bill, to be drawn at a future day, is a good acceptance. According to the modern doctrine, such a promise to accept a foreign bill, to be afterwards drawn, is no acceptance of the bill when drawn, and under no circumstances would such a promise be held to be an acceptance. (*Bank of Ireland v. Archer et al.*, 11 Mees. & Wels. 383; *Bayley on Bills*, p. 166.) But the person promising to accept bills to be drawn, if he refuse to accept them when drawn, is liable in damages for a breach of contract to the party to whom the promise is made. (*Laing v. Barclay*, 1 Barn. & Cress. 396.)

Detention or Loss of the Bill by the Drawee.

The modern doctrine in England appears to be, that the mere detention of a bill by the drawee, for an unreasonable time, will not amount to an implied or constructive acceptance (*Mason v. Barf*, 2 Barn. & Ald. 26), but he is liable for any damages arising from such detention.

The drawee is also responsible for the loss of a bill left with him for acceptance (*Morrison v. Buchanan*, 6 Car. & Payne, 22); and the destruction of the bill by the drawee would render him liable for the full amount (*Jeune v. Ward*, 1 Barn. & Ald. 653); and so the intentional altering or defacing of it would render him liable for all damages resulting from it. The holder must not consent to the drawee's altering the bill, or he will discharge the drawers and indorsers.

American Doctrine. — New York.

The statute law of New York provides that no person within that State shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

And if such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration. An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.

Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill. A refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

Any person to whom a promise to accept a bill may have been made and who, on the faith of such promise, shall have drawn or negotiated the bill, shall have the right to recover damages of the party making such promise, on his refusal to accept such bill.

Every person upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill, accepted or non-accepted, to the holder, shall be deemed to have accepted the same.

Under the New York statute it has been decided, that, if an acceptance of a bill be on any other paper than the bill itself, it will not be binding, unless the fact of such acceptance shall have come to the knowledge of the person taking the bill, and he pay a valuable consideration for it; but the statute is complied with whether such knowledge came from the actual inspection of the acceptance, or from written or oral information. *Bank of Michigan v. Ely*, 17 Wendell, 508.

And it has been decided in Massachusetts, where A. drew a bill on B. in New York, and procured it to be discounted at a bank, and B. afterwards wrote a letter to A. accepting the bill, and A. exhibited the letter to the officers of the bank, that the bank could not maintain an action against B. on his acceptance, under the New York statute. *Worcester Bank v. Wells*, 8 Met. 107.

The drawee of a bill of exchange will charge himself as acceptor, by simply writing his name across the face of it, that being held to be an acceptance in writing, signed by the party, within the meaning of the statute. *Spear v. Pratt*, 2 Hill, 582.

The acceptance of an order for the payment of money must be in writing. *Quinn v. Hanford*, 1 Hill, 82.

It is not necessary to present a bill for acceptance before it becomes due, though it is advisable to do so in all cases, in order that the holder may obtain thereby the additional security of the drawee upon the bill itself. *Montgomery County Bank v. Bank of Albany*, 8 Bar. 397.

A promise to accept a bill need not contain a particular description of the bill to be drawn. *Ulster County Bank v. M'Farlan*, 5 Hill, 434.

Where the drawee of a bill of exchange, who resides in New York, writes a letter thence to the drawer, residing in Massachusetts, accepting the bill, which was drawn in Massachusetts, the contract of acceptance is made in New York, and is governed by the law of that State; and the bill must be presented there to the acceptor for payment. *Worcester Bank v. Wells*, 8 Met. 107.

The General American Doctrine.

The general rule in America in regard to the acceptance of bills of exchange, both inland and foreign, is, that it may be by parol or in writing. Though a bill comes into the hands of a person with a parol acceptance, and he takes it in ignorance of such an acceptance, he may avail himself of it afterwards. (Kent's Com. III. p. 83.) If the drawee say to the holder or his agent, "Leave the bill, and I will accept it"; or "Send the bill to my counting-house, and I will give directions for its being accepted," if the bill be sent; or "Leave your bill and call for it to-morrow, and I will accept it," or "it shall be accepted,"—this will amount to an acceptance. (Story on Bills, § 246.) But if the import of the language be dubious, e. g. "Your bill shall have attention," this will not be an acceptance.

Although the proper and usual mode of accepting a bill is by expressing it in direct words on the face of the bill, with date and the signature of the name of the drawee, still it is not absolutely necessary that his name should appear; and any words written by him upon the bill, not putting a direct negative upon its request, as "accepted," "presented," "seen," the day of the month, or a direction to a third person to pay it, or his own signature in blank, is *primâ facie* a complete acceptance. (Bayley on Bills, Chap. VI. sect. 1. p. 163.)

The holder has a right to demand that the acceptance be put on the bill itself, and according to the full tenor of the bill, or he may treat it as dishonored. However, acceptances of bills already drawn may be made by a letter or collateral writing, at any time, even after the bill has been dishonored, and such an acceptance will inure to the benefit of the holder, although he did not know of the letter. Thus, a writing containing the promise in regard to an existing bill, that it shall meet with due honor, or that the drawee will accept or certainly pay it, will amount to an acceptance. But if the language be dubious, e. g. "Your bill shall have attention," it will not amount to an acceptance. (Story on Bills, § 244.)

Acceptance of a Non-existing Bill.

The doctrine is established in the United States, as to an acceptance of a non-existing bill, that a letter written within a reasonable time before the drawing of a bill, describing it and promising to accept it, is an acceptance in favor of the person to whom such promise was communicated and who took the bill on the credit of it. (*Coolidge v. Payson*, 2 Wheat. R. 66.) So if a person, in writing, authorizes another to draw a bill of exchange, and promises to honor the bill, and the bill be afterwards drawn, and taken by a third party on the credit of that letter, it amounts to an acceptance of the bill. (*Goodrich v. Gordon*, 15 Johns. R. 6.) But the rule is applicable only to cases of bills payable on demand, or at a fixed time after date, and not to bills payable at or after sight. (*Story on Bills*, § 249.)

A parol promise to accept a bill already drawn, or thereafter to be drawn, is binding, if the bill be purchased in consideration of the promise. Thus, where A verbally promised B that A & Co. would honor, accept, or pay bills drawn by C to a certain amount, and B within a reasonable time, upon the credit of this promise, purchased two bills drawn by C on A & Co. to the specified amount, it was held that A was liable to B on this promise, to the amount of the bills, they having been dishonored. (*Townsley v. Sumrall*, 2 Pet. Sup. Ct. R. 120.) But it does not follow from this, that a *parol* promise to accept a non-existing bill would amount to an acceptance of the bill.

Erasure of the Acceptance.

Although the drawee writes his name on the bill, yet if, before he has parted with the bill, or communicated the fact, he changes his mind, and erases the acceptance, he is not bound. (*Kent's Com.* III. p. 85.)

The law in regard to the loss or destruction or defacing of bills, in the hands of the drawee, is the same, as we stated before, as the English law.

Form of Acceptance in particular Cases.

Where the bill is drawn on a partnership, it should be accepted in the partnership name, by any one of the partners. When it is drawn on two or more persons, who are not partners, all of them should sign the acceptance; for an acceptance by one will not bind the others; and the holder is entitled to the acceptance of all. An agent must accept in the name of his principal. Where a bill is drawn in sets, the drawee should not accept more than one part of the set, or he might become responsible to different holders upon each of the accepted parts. (*Story on Bills*, § 251.)

Qualified and Conditional Acceptance.

If the bill be accepted in a qualified degree only, and not absolutely, according to the tenor of it, the holder may assent to it, and it will be a good acceptance to that extent; or he may insist upon an absolute acceptance, and for the want of it protest the bill. A conditional acceptance is, for instance, when the drawee accepts a bill "to pay when goods

conveyed to him are sold," or "when in cash for the cargo of the ship A," or "to accept when a navy bill is paid." The acceptance is *qualified* when the drawee absolutely accepts the bill, but makes it payable at a different time or place, or for a different firm, or in a different mode, from the one expressed in the bill.

If the holder take a conditional or qualified acceptance, he does it at his own peril and risk, and he must give notice thereof to the antecedent parties, and if he does not, they will not be bound by it, but be absolved from all responsibility upon the bill; and it should seem that a protest of the bill for the non-acceptance according to the tenor of the bill, is necessary, and that a mere notice without such protest is not sufficient, unless after notice such parties consented to the conditional or qualified acceptance. (Story on Bills, § 240.)

The holder meaning to assent to a conditional offer of acceptance, must do so at the time of the offer; for if he declines it then, it will be a waiver of all right to hold the drawee. If he assents to it, the acceptor will, if the condition be complied with, be bound by it. Any conditions annexed to an acceptance should appear upon the face of the acceptance, if in writing, because any subsequent holder for value, without notice, would not be bound by any verbal conditions.

Acceptance supra Protest.

When a bill has been protested for non-acceptance or non-payment by the drawee, a third person may intervene, and become a party to the bill, by accepting and paying the bill for the honor of the drawer, or of a particular indorser. This acceptance is termed an *acceptance supra protest*, and such an acceptor becomes liable to the same obligations as if the bill had been directed to him. He has his remedy against the person for whose honor he accepted, and against all the parties who stand before that person. If he takes up the bill for the honor of the indorser, he is like an indorsee, and has the same remedies to which an indorsee would be entitled against all prior parties, and can sue the drawer and indorsers.

Such an acceptance is allowable only after the drawee has refused acceptance or payment, and the bill has been protested, and the acceptor must, at the same time, specify for whose honor he accepts, as his rights, if he pay the bill, against the antecedent parties are essentially changed. If he accepts for the drawer only, he will, ordinarily, have no rights of recourse against the indorsers. It is also to be observed, that if the bill, on its face, directs a resort to a third person, in case of refusal by the drawee, (which is expressed at the foot of the bill, by using the words, "In case of need, apply to —,") such direction becomes a part of the contract, and the holder must apply first to such third person. Although, when the drawee has accepted a bill, no other person can intervene and accept, yet in cases of an acceptance *supra protest*, or for honor, there may be several acceptances for the honor of different parties. Thus, for example, one person may accept the bill *supra protest*, for the honor of the drawer, another for the honor of the first indorser, and so on. It may be also done by the drawee himself, either in favor of the drawer or of an indorser of the bill.

The Mode of accepting a Bill supra Protest, and the Form of an Act of Honor.

When any person intends to accept a bill *supra protest*, an act of honor, or an act for honor, as it is sometimes called, must be prepared by a notary, which is a notarial certificate, under the hand and seal of the notary, declaring that the bill, of which a copy is prefixed, having been protested for non-acceptance, a third person (or the drawee, as the case may be) would accept the bill; either for the whole or a part of the amount, for the honor or on account of any party to it; and it commonly concludes with some general declaration, to the effect, that such party (and other proper persons) are held responsible for the amount, and for all costs, damages, interest, etc. It is not necessary to have any attesting witness to it. The act of honor must be truly dated, on the day on which the bill was exhibited and the acceptor for honor undertook to accept it; it is, in fact, a notarial certificate, explaining the nature and objects of the acceptance *supra protest*. A copy is preserved of the act of honor, and of the bill, in the protest book, or book of registry of the notary.

The protest should be kept by the holder of the bill, as it is for his security, but the act of honor, or a duplicate, should be kept by the acceptor *supra protest*, who also pays the expense of the act of honor, and if he accept for the whole amount, he also pays or reimburses the expense of the protest.

After the act of honor has been prepared, or at the same time with it, the acceptor, or some person authorized by him, writes upon the bill an acceptance, which may be and generally is as follows:—"Accepted *supra protest* for the honor of the drawer [or the indorser]. 1st March, 1853. A. B."

Or if for part:—"Accepted *supra protest* for — dollars, being part of the amount of this bill for the honor of —. 1st March, 1853."

If it happens that the drawee has not sufficient funds of the drawer on hand to pay the full amount of the bill, and he is willing to accept for a part of the amount only, the proper and regular course is to cause the bill to be absolutely protested, and to state in the protest that the drawee had refused to accept it *according to the tenor of the bill*; and then to have an act of honor prepared, certifying that the drawee would accept the bill *supra protest* for part of the amount, for the honor of the drawer; and then for the drawee to make an acceptance *supra protest* for such part on the bill.

This mode is the safest for the holder, to avoid any question in regard to the discharge of prior parties. (See R. Brooke's Treatise on the Office of a Notary of England, pp. 114–119.)

Duty of the Holder.

The holder must give due notice of the dishonor of the bill to the other parties to the bill, as in ordinary cases of dishonor.

Effect of a General Acceptance supra Protest.

In Chitty on Bills, Ch. VIII. § 3, it is said: "A general acceptance *supra protest* is considered as made for the honor of the drawer, unless otherwise expressed. Such acceptance, however, may be so worded, that, though it be intended for the honor of the drawer, yet it may equally bind the indorser; but in this case, notice of such acceptance must be sent to the latter. If there be several offers of acceptance for honor, that which is most extensive should, it is said, be preferred. The holder, as well as the acceptor *supra protest*, should always take care to have the bill protested for non-acceptance before the acceptance for honor is made."

Obligations of an Acceptor supra Protest.

The obligations of an acceptor for honor are conditional, namely, that he will pay the bill, if duly presented to the original drawee for payment, and due protest is made thereof, and due notice is given to him of the dishonor. If these acts are not strictly done, the acceptor for honor is discharged. (Story on Bills, § 261.)

Duty of the Holder.

The holder of a bill is not obliged to take an acceptance *supra protest*, but he would be bound to accept an offer to pay *supra protest*. But if he does take it, he must strictly conform with the rules of law, as above stated; but having given due notice to the other parties to the bill, he retains his rights against them.

The Drawee may accept for Honor.

The drawee, too, as well as any other person, may accept for honor. Thus, if a bill be drawn by A on account of B, he may accept for the honor of A, and on his account. So the drawee may accept for the honor of an indorser, and on payment of the bill he can sue the indorser or any of the prior parties.

Protest for better Security.

If it happens that, after acceptance, and before the maturity of the bill, the acceptor absconds, or becomes a bankrupt, or insolvent, the holder may protest the bill, at his pleasure, but he is not bound to do so; for if he neglects to make this protest, it will not affect his remedies against the prior parties, either drawers or indorsers. This protest is called a *protest for better security*. Its principal use seems to be, that by giving notice to the drawers and indorsers of the situation of the acceptor, by which it is become improbable that payment will be made, they are enabled by other means to provide for the payment of the bill when due, and thereby prevent the loss of reëxchange, etc., occasioned by the return of the bill. But though the drawer or indorsers refuse to give better security, the holder must, nevertheless, wait till the bill be due before he can sue either of those parties. (Chitty on Bills, Ch. VIII. § 3, pp. 375, 397, 8th edit.)

This course is principally pursued with respect to foreign bills from the Continent of Europe, as the advantage of it is, that, by the laws of various countries, the holders may, after such a protest, attach the property of, or sue, the parties to them. (See the foreign law, before stated.) As respects legal proceedings in this country, it is not considered incumbent on the holder to make this protest; nor will his neglecting to do so injure his remedy against the drawer or indorsers.

If the holder should take a protest for better security, and the security should not be given, another protest must be made for non-payment, at the time of maturity of the bill, and due notice must be given, in order to hold the prior parties.

Forgery of the Signature of the Drawer and other Parties.

It must yet be mentioned, that the acceptance, whether general or for honor, or *supra protest*, after sight of the bill, admits the genuineness of the signature of the drawer, and consequently, if the signature of the drawer should be a forgery, the acceptance will, nevertheless, be binding as to a *bonâ fide* holder for value, without notice, and entitle such holder to recover. (Canal Bank v. Bank of Albany, 1 Hill, N. Y. R. 287.) But there is no such implied admission, on the part of the acceptor, of the genuineness of the signature of the payee, or of any other indorser; and consequently the holder, in order to recover against the acceptor upon the bill, must establish, by proofs, the genuineness of their signatures, in order to make title thereto, although he need not prove the genuineness of that of the drawer. In like manner, an acceptance admits the ability of the party to draw, and if drawn by an agent in the name of his principal, it also admits that he has full authority to draw the bill. But it does not admit the authority of the agent to indorse the same bill, even though it is made payable to the order of his principal, and is indorsed by the same agent in the name of the principal. Story on Bills, § 262.

The drawee is bound to know the drawer's signature, and if he accepts a forged bill, he is bound to pay it; and if he has paid it to a *bonâ fide* holder, he cannot recover the money back. Goddard v. Merchants' Bank, 4 Comstock, 147; Bank of Commerce v. Union Bank, 3 Comstock, 234.

This rule is applicable to third persons who intervene for the honor of the supposed drawers, and pay a forged bill, if they have seen the bill before parting with their money. A forged bill, purporting to have been drawn by the Canal Bank at Cleveland, was presented to the drawees in New York on Saturday, and payment refused for want of funds. On Monday after, the plaintiff called at the notary's office and desired to see the bill, but did not see it. He left a check for the amount of the bill, and requested that the bill should be *immediately* sent to his residence. The check was given by the clerk to the notary, who on the same day delivered it to the holder of the bill, but did not send the bill to the plaintiff. On Tuesday the plaintiff called again, and, upon inspecting the bill, at once pronounced it a forgery; under these circumstances, it was *held* that the plaintiff was not chargeable with negligence, and that the holder

was bound to refund the money thus paid under mistake. *Goddard v. Merchants' Bank*, 4 Comstock, 147.

But the rule, that, if the drawee pay a bill to which the drawer's signature is forged, the drawee cannot recover it back, does not apply when the forgery is not in counterfeiting the signature of the drawer, but in altering the *body of the bill*, as if a bill for \$105, payable to J. D., be fraudulently altered to a bill for \$1,005, payable to J. B., and with this name indorsed; in this case the drawees are entitled to recover back the money, provided they are not guilty of any negligence in not detecting the forgery before paying the bill. *Bank of Commerce v. Union Bank*, 3 Comstock, 230.

But it is stated by Bayley, p. 325, that whoever pays a bill should be satisfied it is in all its parts genuine; if it be not, he will pay it at his peril, and will lose his remedy against the party on whose account he pays it. (*Hall v. Fuller*, 5 Barn. & Cr. 750.) Thus, if a banker pay a check which has the genuine signature of his customer, he will not be entitled to charge it against his customer, if the amount has been altered by forgery since the customer issued it. (*Ibid.*) But if the bill be drawn in a careless and informal mode, and that mode facilitates, and perhaps suggests, the commission of the forgery, the customer, not the banker, shall bear the loss; as if, in the first word for the amount, a small letter be used instead of a capital one, and space be left for prefixing a word; and, where the amount is specified in figures, if space be left where a previous figure may be introduced. *Young v. Grote*, 4 Bingh. 253.

Where the first of a set of exchange is lost by the payee, and the payee's name forged upon it, payment by the drawee to a stranger will be no defence to an action on the second of the set, by the payee against the drawer, the proper steps having been taken to charge him upon it. *Depan v. Browne*, Harper's R. 251; Bayley on Bills, p. 326, 2d Am. ed.

B., an innocent holder of a bill, payable to order, on which the payee's name had been forged, received the money upon the same from C., the drawer; *held*, that, though innocent of any intended wrong, B. had received the money upon an instrument to which he had no title, by reason of the payee's indorsement being forged, and he was bound to refund it to C., and could not resist a suit by C., or by the real owner of the bill. *Bank of Albany v. Canal Bank*, 2 Hill, 287; *Talbot v. Montgomery Bank*, 2 Hill, 295.

CHAPTER V.

PROMISSORY NOTES.

Form and Parties.

A PROMISSORY note is a written promise by one person to pay another person named, unconditionally and at all events, a certain sum of money, at a time specified. They are either negotiable or non-negotiable notes

A note is negotiable when the promise is made to pay to a person, or his order, or bearer. For instance :—

“ *Boston, January 1st, 1852.*

“ For value received, I promise to pay to John Brown, or order, one thousand dollars, three months after date.

“ *WILLIAM WHITE.*”

Or :—

“ *Boston, January 1st, 1852.*

“ For value received, I promise to pay to John Brown, or bearer, one thousand dollars, three months after date.

“ *WILLIAM WHITE.*”

If the note read as follows, it would be a non-negotiable note :—

“ *Boston, January 1st, 1852.*

“ For value received, I promise to pay to John Brown one thousand dollars, three months after date.

“ *WILLIAM WHITE.*”

In case of a negotiable note, made payable “to the order of A. B.,” or “to A. B. or order,” the person who promises to pay is called the promisor or maker, and the person to whom it is made payable, the payee. If the payee writes on the back of the note his order to whom the contents shall be paid, and affixes his signature to it, or if he simply writes his name on the back in blank, he is called an indorser, and the person to whom he assigns the note is called the indorsee or holder. The same rules hold good in regard to indorsements on notes, that we have specified in regard to bills of exchange.

The difference between promissory notes and bills of exchange is, that a promissory note need not be presented for acceptance, but the promisor is, so to speak, the drawer and acceptor at the same time, and primarily liable to pay the note. A bill of exchange has ordinarily three parties, the drawer, the drawee or acceptor, and the payee; and the acceptor is the primary debtor to the payee, and the drawer is only collaterally liable. The relations of the indorsers on both classes of instruments are essentially the same.

Promissory notes, like bills of exchange, are presumed, in law, to be for a valuable consideration. Between the original parties, the consideration may be inquired into as a matter of defence. But if the note is in the hands of an innocent holder, for a valuable consideration, without notice as to the origin of the note, it is binding upon all antecedent parties, and it becomes immaterial whether there was originally a consideration or not, except it be taken after it is overdue.

The Requisites of Notes.

A promissory note must be in writing, either in ink or pencil; that is to say, the signature of the promisor must be so; the body of the note may be printed. If signed by an agent, it must be done in the name of the principal, as we have stated before in regard to bills of exchange.

Although the form we have given above is the one in common use,

still it may be varied, if only the essentials are contained in it. Thus, an order or promise to deliver a certain sum of money to A, or to be accountable or responsible to A for a certain sum of money, or that A shall receive it from the maker, is a good promissory note. So, a receipt for money "to be returned when called for"; or an acknowledgment, "Due to A a certain sum of money, payable on demand"; or a promise "to pay or cause to be paid to A" a certain sum of money; or an acknowledgment of a receipt of money to be repaid in one month; or acknowledging to have borrowed a certain sum of money, in promise of payment thereof; or saying, "I guarantee to pay A or his order" a certain sum,—have all been held to be good notes. It is not necessary that the payee should be expressly named; it is sufficient if it can be fairly implied to whom the promise is made. (Story on Promissory Notes, § 12.) But the express promise must appear on the instrument. A mere acknowledgment of debt, without a promise to pay, is not a promissory note; i. e. "I owe you one hundred dollars," is a mere due bill. But a due bill payable at a particular time would be a good note.

If the language of the instrument is ambiguous, and might be interpreted either as a promissory note or as a bill of exchange, the holder may treat it as either, at his option. So, if a person draws an order upon himself, or payable by himself, and indorses it, it may be treated as a promissory note. So, an order drawn by A, as manager of a company, on the company, for a certain sum, payable without acceptance to C. D. or order, may be treated as a promissory note. (Miller v. Thomson, 4 Scott's R. 204.)

For the Payment of Money.

The instrument, in order to be a valid promissory note, must be for the payment of money, and money only. For instance, a written promise for the delivery or payment of merchandise or chattels, is not a valid promissory note; or a written promise to pay the bearer a certain sum of money in goods or in grain, or to pay a sum of money "in foreign bills," or "in current bank-notes," or to pay a certain sum of money "and all fines according to rules," is not a promissory note.

For a Fixed Sum and at all Events.

The sum must, moreover, be for a fixed amount. A written promise to pay a certain sum of money, with all other sums that may be due to the payee, is not a promissory note. But the amount may be expressed in figures, instead of words.

It is further necessary, that the money be payable *absolutely* and *at all events*, and not subject to any condition or contingency. Thus, a promise to pay a certain sum of money "if A shall marry," or when A shall marry; or "provided A shall not pay the money by a certain day"; or "four years after date, if I am then living, otherwise this note to be null and void"; or "to pay when circumstances will admit, without detriment to myself or family"; or "provided the ship Mary arrives free from capture or condemnation"; or to pay when the payee "com-

pletes the building according to contract"; or "when certain carriages are sold," etc., — is not a valid promissory note. (Story on Notes, § 22.) So, likewise, a note for the payment of money "out of rents," or "out of the net proceeds of ore to be raised and sold from a certain ore-bed," or "out of the fifth payment when due," is not a valid promissory note, because the payment is made to depend upon the existence or sufficiency of a certain fund.

But a note promising to pay A or order a sum of money, "being money which I have received on his account," or "which I owe him for freight," or to pay to A. B. a certain sum of money, "so much being to be due from me to C. D., my landlady, at Lady Day next, who is indebted in that sum to A. B.," will be a valid note, because the additional words only show the consideration given.

Payable at a Fixed Time.

A note, in order to be valid, should be for the payment of money at a *fixed time*, or on some event which must necessarily happen. A note made payable at the death of a party to the note, or of a third party, is a valid note. But a note made payable "when the maker or the payee shall come of age," will not be a good note; but if the note were made payable "when the payee shall come of age, to wit, on the first day of January, 1852," it would be a good note, because the note would become due on the day specified, whether the payee were living or dead. So where the maker promised to pay a certain sum "by the 20th of May, 1807, or when he [the payee] completes the building according to contract," the court held it to be a valid note, it being payable at a day certain, the 20th of May. (*Stevens v. Blunt*, 7 Mass. 240.) So, where a note was made payable by instalments, with a proviso, that, if default be made in payment of any part of the first instalment, the whole shall become immediately payable, has been held a good note.

A note made payable at sight, or a certain number of days after sight, or in ten days after notice, or on request, or on demand, is a valid note because payable at all events; so a note made payable at Christmas or New Year's day. (Story on Notes, § 29.)

Payable by and to Persons certain.

The validity of a note requires, further, that the persons by whom and to whom it is payable should be certain, and not contingent. A note made payable in the alternative, as "to A. B. or C. D.," or "to A. B. or C. D., or his or their order," is not a valid note; so a note payable "to the heirs, administrators, or assigns" is not valid. (*Bennington v. Dinsmore*, 2 Gill's R. 348.) The name of the person who makes the note must be inserted in the body, or subscribed at the bottom, of every note, and it must be written or signed by the person making it, or some one authorized by him for that purpose. (*Bayley on Bills*, Chap. I. § 11.) It is therefore not absolutely necessary, that the maker sign his name at the bottom, but it must appear, signed by him, on the face of the instrument. It must,

however, be observed, that it is so uncommon not to sign a note at the bottom of the instrument, that any such note would excite suspicion.

A note made payable by "A. B. or else C. D." is void as a promissory note, because it is uncertain who is to pay it.

Payable to Bearer or a Fictitious Person.

A note "payable to A or bearer," or "payable to bearer," is a valid note, and is payable to whoever holds it. So, a note in these words: "Received of B £ 50, which I promise to pay on demand," — is a good note, payable to B. A note payable to the order of the maker, and by him indorsed and put in circulation, is treated as a note to the bearer. A note issued with a blank for the payee's name, may be filled by any *bonâ fide* holder with his own name as payee. A note payable to "A or assigns," is equivalent to one payable to "A or his order."

If notes are made payable to a fictitious person, or to his order, and are issued with an indorsement in blank, purporting to be made by such person thereon, the real maker of the note, who assumes the character of the indorser, will be held liable, and the note, if in the hands of a *bonâ fide* holder, will be held payable to bearer; so, also, if put in circulation by the maker, with the indorsement of the payee forged upon it. (*Coggill v. American Exchange Bank*, 1 Comstock, 113.)

A Note without a Date.

If a note should bear no date, and be payable a certain number of days after date, the time will be computed from the day it was made and issued, and if that cannot be ascertained, from the day when its existence can first be established.

Notes of Executors, etc.

Trustees, guardians, executors and administrators, and other persons, not acting in their own right, will generally be held personally liable on promissory notes and bills of exchange, although they sign their name, with the addition, "as executor," or "as administrator." If they do not wish to be personally bound, they must use clear and explicit words to show that intention, and they must limit their responsibility by saying that they will pay out of the estate. (Story on Notes, § 63.)

A promissory note was signed by "B. and B., Trustees, etc."; it was held, they were personally liable. (*Hills v. Banister*, 8 Cowen, 31.)

Place where a Note is made.

The place where a note is made is generally put on the face of the note; but it is not absolutely necessary. If a note is intended to be paid at a particular place, that place must be stated in the instrument, and parol evidence is not admissible to show that the parties agreed to it. Nor is a mere memorandum at the foot or on the margin of the note sufficient to make it payable at a particular place; it should be in the body of the note itself, and constitute a part of it. (Story on Notes, § 49.)

Memoranda on Notes.

A memorandum at the bottom of a note payable on demand, below the maker's signature, in these words: "One half to be paid in twelve months, the balance in twenty-four months," — if written before the note is passed to the payee, was held to form a part of the note, and limit the generality of the words "on demand," in the body of the instrument. (*Heywood v. Perrin*, 10 Pick. 228.) And parol evidence was held admissible to show when, by whom, and under what circumstances, the memorandum was affixed to the note. (*Ibid.*)

Notes signed by a Mark.

If the note be made by a person who cannot write, and merely makes his mark, it is important to have a witness who can testify to the genuineness of the mark, because this would be required.

Witnessed Notes.

In the State of Massachusetts it has been enacted, that the statute of limitation shall not apply to any promissory note, attested by a witness, when the action thereon is brought by the payee or by his executor or administrator. It may sometimes create an inconvenience to have a note witnessed, because then the note must be proved by the attesting witness, and not otherwise, unless the witness be dead or abroad, or otherwise necessarily absent; and then the proof of the handwriting of the attesting witness may be required.

Joint and several Notes.

If more than one person make a note, it may be either joint, or it may be joint and several. If two or more persons write, "We promise to pay," it is a joint note only, unless they add the words "jointly and severally." When the note is written, "I promise to pay," and signed by two or more persons, it is a joint and several note. If the note is signed by a firm, or by one person of a firm in the name of the firm it is a joint note, whether it be written "I" or "We" promise to pay. When a note is written, "We promise," and signed, "A. B. principal, C. D. surety," it is still the joint note of both; and if it be written, "I promise," and signed in the same manner, it would be the joint and several note of both. For the language merely serves to point out the relation of the makers to each other, and does not change the rights of the payee or holder. (*Story on Notes*, § 57.)

CHAPTER VI.

PRESENTMENT OF BILLS OF EXCHANGE AND PROMISSORY NOTES
FOR PAYMENT.*When to be Made.*

THE presentment of an accepted *bill of exchange* or of a *promissory note* for payment should be made at its maturity, and not before, nor generally after, and at the proper time and place. Although the acceptor of a bill and the maker of a note are bound, generally speaking, to pay absolutely, the undertaking of a drawer of a bill, and that of the indorsers of it, or of a promissory note, are conditional; namely, provided that the holder will demand payment at the proper time and place, and of the proper person, and in case of failure of payment, that he will give them proper and due notice.

We have already seen, that the presentment of a bill for acceptance is not excused by the drawee's death, bankruptcy, insolvency, or absconding. If he is dead, it should be presented to his personal representatives, if any, or at his last domicile; and if he has absconded, it should be presented at his last domicile or place of business. The same rules which we laid down there obtain also in regard to presentment for payment of both bills and notes. The presentment for payment must be made personally upon the acceptor or maker, at his place of business, or at his dwelling house, and cannot be made by a written demand sent to him through the post-office.

Time of Maturity.

We will first state when a bill or note arrives at maturity. A bill or note importing to be payable within a limited time after a certain event, or on a given future day, or at sight, or a number of days after sight, is not in fact payable until three days after the expiration of that time. Those three extra days are called days of grace, and allowed in England and the United States, except where the statute law expressly directs otherwise, or the usage of the place is different, or where the bill or note is made payable without grace, on the face of it. For instance, in the District of Columbia four days of grace were allowed by the banks formerly, but no longer now.

In counting time by days, the day of the date of the bill or note is excluded from computation, and by months is understood calendar months. If a bill or note is payable ten days after date without grace, and the bill is dated on the 1st of January, the bill or note is due on the 11th. So a bill payable ten days after sight without grace, if accepted on the 1st of January, is payable on the 11th. A bill of exchange or a note payable one month after date without grace, if the date of the instrument is the 10th of January, would be due on the 10th of February. No allowance would be made for the fact that February contains only twenty-eight days. A bill of

exchange or a note payable six months after date, or after sight, without grace, will be payable on the corresponding day of the sixth month, whatever number of days those months contain. So if it were dated the 1st of January, six months after date without grace, it would be payable the 1st of July.

Days of Grace.

In respect to the allowance or non-allowance of days of grace, the rule is, that it is to be governed by the law of the place where the bill of exchange or note is payable. In France and Germany no days of grace are allowed by law. In the United States three days are generally allowed. A bill or note payable ten days after date, or sight, and dated the 1st of January, would be payable on the fourteenth; or if payable one month after date, it would fall due on the 4th day of February; or if payable thirty days after date, the days of grace would begin on the 1st day of February, and end on the third day. In each case, the time of running of the bill or note is calculated exclusive of the day of its date. If a bill is drawn payable at a certain number of days after sight, the time would begin to run only from the acceptance thereof, and exclusive of that day.

The days of grace are to be all counted consecutively, without any deduction on account of there being any Sunday or holidays, or other non-secular days, intermediate between the first and the third. If the first day of grace should be on Saturday, the third day of grace would be on Monday; so if the first day of grace commences on Sunday, the last or third day would be on Tuesday.

But whenever the *last* day of grace falls on a Sunday or other holiday, the bill or note becomes due and payable on the preceding day, that is to say, the latest business day occurring within the days of grace is the day on which the bill or note becomes due. If the last day of grace should fall on a Sunday, the bill or note would be due on the Saturday preceding. And if two holidays should succeed one another, as Sunday and the Fourth of July on Monday, and the third day of grace should fall on that Monday, the bill or note would be due on the preceding Saturday, the 2d of July. The general non-secular days in the United States are Sundays, Thanksgiving and Fast days, Fourth of July, and in some States also Christmas and New Year's days. The statute regulations in regard to them may be found below.

In England and America, days of grace are allowed on all bills, whether they are payable at a certain time after date or after sight, or at sight. Bills payable *at sight* are allowed the days of grace, but not bills payable *on demand*; these latter are immediately payable upon presentment. The rule applies to promissory notes, bank post-notes, and in some of our Western and Southern States, bonds are put on the same footing with notes, by statute.

The law of a foreign country, in respect to days of grace, in the absence of proof to the contrary, is presumed to be the same as our own. (*Dolfin v. Frasch*, 1 Denio, 367.)

The question whether bills of exchange payable *at sight* are entitled to three days' grace, does not seem to have been settled in the United States by direct decisions. Although we have stated the rule as fixed, we wish at the same time to state that the usage and practice in many cities and states are the other way; namely, that bills of exchange payable *at sight* are to be paid at once upon presentment, like bills and notes payable *on demand*. The text-writers, however, lay down the rule as above stated.

Chancellor Kent, in his Commentaries, Vol. III. p. 102, says: "The three days of grace apply equally to bills payable *at sight*, but a bill, note, or check payable on demand, or where no time of payment is expressed, is payable immediately on presentment, and is not entitled to the days of grace." He cites Chitty and Bayley on Bills as authority to this point, but remarks in the note (d): "On the other hand, though the weight of authority would seem greatly to preponderate in favor of the rule as laid down in the text, yet it may be considered as a point not entirely settled, and a different rule is laid down in Beawes's *Lex Mercatoria*, pl. 256, and in Kyd on Bills, p. 10."

Judge Story, in his work on Bills of Exchange, § 342, says: "In England, days of grace are allowed on all bills, whether they are payable at a certain time after date, or after sight, or even at sight. As to the latter (bills payable at sight), there was some diversity of opinion among the profession, as well as among the elementary writers. But the doctrine seems now well established, both in England and in America, that days of grace are allowable on bills payable at sight. And the same rule has been applied, as in strict analogy it should apply, to bank post-notes, payable after sight, for they differ in nothing from ordinary inland bills of exchange. But bills payable *on demand* are immediately payable upon presentment, without allowing any days of grace."

Bayley on Bills, p. 233, says: "A bill or note importing to be payable within a limited time after a certain event, or on a given future day, or *at sight*, is not in fact payable until two days after the expiration of that time, nor, unless the third be a day of public rest, until three."

Chitty on Bills, ch. 9, pp. 408, 410, says: "With respect to a bill payable at sight, though, from the very language of the instrument, it should seem that payment ought to be made immediately on presentment, this does not appear to be so settled. The decisions and the treatises differ on the question, whether or not days of grace are allowed."

He then quotes Pothier, regarding the old French law, Beawes's *Lex Mercatoria*, and Kyd on Bills, all of whom state that days of grace are not allowable on bills payable at sight; and then continues: "But it appears now to be considered as settled, that days of grace are to be allowed. In *Dehers v. Harriot* (1 Show. 163), it was taken for granted, that days of grace were allowable on a bill payable at sight. The same doctrine was entertained in *Coleman v. Sayer* (Barnard. K. B. R. 303). And, in another case, where the question was whether a bill, payable at sight, was included under an exception in the Stamp Act 23 Geo. III. c. 49, § 4, in favor of bills payable on demand, the court held that it was not; and Buller, J. mentioned a case before Willes

C. J., in London, in which a jury of merchants were of opinion that the usual days of grace were to be allowed on bills payable at sight. And in Forbes on Bills (p. 142), the same practice is said to prevail. And Mr. Selwyn, in his *Nisi Prius* (p. 339, 4th edit.), observes that the weight of authority is in favor of such allowance. And they were allowed on such bills at Amsterdam."

R. Brooke, in his treatise "on the Office and Practice of a Notary of England," says (p. 163): "The course usually pursued when it [a bill of exchange] is payable at sight, is to present such a bill for acceptance, and if refused, and if a foreign bill, to protest it for non-acceptance; after a refusal and protest of the bill for non-acceptance, it is at once, according to the laws of this country, dishonored, and there does not appear to be any absolute necessity also to protest such a bill three days afterwards for non-payment, though in practice it is occasionally done; but as our laws may not be well known in other countries, it is submitted that it may be advisable to add in the protest for non-acceptance, that the drawee declared (if the fact be so) that the bill would neither be accepted nor paid; the course, however, which is recommended in order to obviate all doubt, is to protest it first for non-acceptance, and three days afterwards to present it again and protest it for non-payment."

Page 164: "It is a general rule, that three days of grace are allowed upon foreign and inland bills of exchange, and promissory notes, unless they are payable on demand; and consequently the *onus* rests upon the holder, who may feel disinclined to allow them in any particular case, of proving that such case does not come within the rule. When no time of payment is expressed, the bill is payable on demand."

Page 62: "If a bill be drawn, payable at a certain period after sight, it is necessary that it should be presented for acceptance, in order to fix the day of sight, from which the period is to run, and consequently the time when it will become due. Bills payable at sight are also presented for acceptance. Such bills as are payable on demand, as we shall afterwards see, and promissory notes, are never presented for acceptance; checks upon bankers, however, are occasionally accepted by bankers, when their customers consider that when accepted they would be more satisfactory to any persons to whom the checks are intended to be paid away."

He adds in a note: "The above observation is not intended to apply to promissory notes made payable *after sight*. They are very rarely made in that form, but when so made it seems to be the practice to present them for acceptance; the general Stamp Act, 55 George III. c. 184, contemplates the making of them payable *after sight*; and the author has occasionally seen such notes, and has known instances of their having been presented for acceptance. In *Wray v. Bassett*, cor. V. C. Wigram, Michaelmas Term, 1845, promissory notes of that description were read in evidence when the author happened to be in court."

Judge Story says, in his treatise on Promissory Notes, § 207: "Promissory notes are not ordinarily made payable at sight, or at a fixed time after sight, although they may be so. . . . If the note be payable at

sight, or at so many days after sight, the same rule would seem to prevail as upon bills of exchange, drawn at or after sight. That is to say the date of the note would be treated as if it were the date of a bill payable at or after sight, and the time would begin to run from the presentment of the note, as it would from the presentment for acceptance. In short, although the maker of a note payable at sight (which is, however, allowed the usual days of grace, as we shall presently see, § 211), or payable after sight, has sight of the instrument when he makes it, yet a distinct and subsequent presentment must afterwards be made, and the time of payment be reckoned from the day of such presentment, and exclusive thereof."

§ 208. "Now the rule in relation to bills of exchange, whether foreign or domestic, payable at or after sight, unequivocally is, that they must be presented for acceptance (and by analogy the rule applies to presentment of notes payable at and after sight) within a reasonable time; and what that reasonable time is must depend upon the circumstances of each particular case. The holder of such a note is not at liberty to keep it in his possession for an unreasonable time without presentment, and lock it up from circulation. If he does, he will make the note his own, and will discharge the antecedent indorsers thereon from all responsibility."

Mr. Chitty, pp. 406, 407, says: "When a bill or note purports to be payable so many days after sight, the days are computed from the day the bill was accepted, or the note presented, exclusively thereof, and not from the date of the bill or note, or the day the same came to hand, or was presented for acceptance. And in case of a bank post-bill, which is really a promissory note, and in case of a note payable after sight, though the maker has sight of the instrument when he makes it, yet a distinct and subsequent presentment must afterwards be made, and the time of payment is reckoned from the day of presentment, exclusive thereof."

In the following States of the Union, it has been provided by statute that days of grace be allowed on bills of exchange payable at sight: Maine, New Hampshire, Massachusetts, North Carolina, South Carolina, Ohio, Wisconsin.

In the following States days of grace are allowed on bills of exchange payable at sight, although not enacted by statute: Alabama, Indiana, Kentucky, Texas.

In Louisiana a decision has been made in one of the inferior courts allowing three days' grace on sight bills, but the usage is to pay on presentation.

In the following States days of grace are disallowed *by statute* on bills payable at sight: Vermont, Connecticut.

In the following States days of grace are not allowed on bills of exchange payable at sight, by the usage among banks and merchants, but no legal decisions have confirmed this usage as law: Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Georgia, Florida, Illinois, Iowa, Michigan, Mississippi, Missouri, Tennessee.

In Arkansas the statute provides that "foreign and inland bills shall be governed by the law merchant *as to days of grace*, protest, and notice."

In the last-mentioned States it is not safe to rely upon the prevailing usage alone. In case of the dishonor of a bill payable at sight, it is necessary, in order to be perfectly safe, to have such bill protested twice; namely, immediately upon presentment and upon the third day of grace, so as to avoid litigation on this point.

In Louisiana it has been decided, that a bill payable on a fixed day (as on the 1st day of March) is payable on presentment, and no days of grace are allowed. (*Durnford v. Patterson*, 7 Martin's R. 460.) But this is not the general law, but a local peculiarity. Days of grace are allowed on bills and notes payable on a fixed day, by the general law.

Checks made payable at a day fixed, different from that on which they are dated, are treated as bills of exchange and entitled to days of grace, according to a late decision by the Court of Appeals in New York. (*Bowen et al. v. Newell*.) The instrument in this case was as follows:—

"NEW YORK, Oct. 5, 1849.

"Cashier of Thompson Bank, — Pay Zenas Newell or order two thousand dollars on the 12th inst.

(Signed,)

B. SEARLS & SON."

(Indorsed,)

"ZENAS NEWELL."

It was held, that notice and protest on the 12th were premature. To avoid protest for non-acceptance in such cases, and to insure payment on the day, they should be drawn with the words, "without grace, acceptance waived."

On account of the uncertainty of the law regarding drafts at sight in New York, it is the practice of the banks in New York to protest sight drafts twice. Where it is intended, therefore, that all such drafts shall be paid on presentation, the words "without grace" should be inserted after "at sight."

In a recent case of a bill payable at sight (*Trask v. Martin*), which was argued before the general term of the Court of Common Pleas in the city of New York, it was decided, that bills payable at sight are *not* allowed days of grace, but must be paid immediately upon presentment; and in case of dishonor, protest and notice on the day of such dishonor are properly made and given. Mr. Justice Woodruff, in giving his opinion, reviews all the elementary writers whom we have above cited as authorities for the proposition that bills at sight are entitled to days of grace, and says: "Upon this review of dicta and alleged decisions, it appears to me that we cannot say that by law days of grace are allowable upon a bill at sight." And he concludes: "My conclusion is, that the language of the *instrument*, in the absence of any settled legal principle modifying its import, must govern the court in determining its meaning and effect. And that there is no known recognized usage which the court can say has given to such bills the allowance of days of grace."

This case has not been passed on by the Court of Appeals, and hence the law is yet to be considered as unsettled.

Presentment as to Time of Day.

In regard to the time of day when presentment must be made, the rule is, that it must be done at a *reasonable hour* of the day. If made at the place of business, it must be made within the usual hours of business, or, at furthest, while some person is there who has authority to receive and answer the presentment. If made at the dwelling-house, it may be made at any seasonable hour, while the family are up, and the acceptor or promisor may reasonably transact business. In all these cases the same rule applies which was laid down in regard to presentment for acceptance.

Place of Presentment for Payment.

Presentment for payment of a bill or note must be made, as in cases of presentment for acceptance, at the place of domicile, i. e. the city or town of the acceptor or maker, either at his residence or his place of business; whether both are in the same place or in different places, a presentment at one only is required. If the acceptor or maker has changed his place of domicile or business in the intermediate time, the presentment must be at the new domicile or place of business, if, by reasonable diligence and inquiries, it can be found, and if it is within the State. But if the maker of a note or an acceptor of a bill, in which no place of payment is specified, after it is given, removes out of the State of his previous residence, either into a foreign country or one of the other States, a presentment to him is not necessary. The same is the case, if he has absconded, or his place of residence cannot, upon reasonable inquiries, be found. If the acceptor or maker of a note has gone abroad and left his family behind, or has a counting-house, or a general agent, to whom he has given his business during his absence, it will suffice to make presentment at either of these places. If the dwelling-house or the place of business of the acceptor or maker is shut up, or they cannot be found, after diligent inquiries, the bill or note may be treated as dishonored.

It has been decided in New York, that the date of a note at a particular place does not make a demand at that place in every case necessary. (*Taylor v. Snyder*, 3 Denio, 146; *Anderson v. Drake*, 14 Johns. R. 114; *Bank of America v. Woodworth*, 18 Johns. R. 323.) Where the maker of a note has a known residence at the time of the execution of the note, which he does not change before the note becomes payable, a regular demand must be made there, or upon the maker personally, though the note be dated at a different place. (*Taylor v. Snyder*, 3 Denio, 146.) Where a note was dated in New York city, but before it was payable the maker removed to Kingston, Ulster County, and this was known to the holder, a demand of payment and diligent inquiry for the maker at New York was held not to be sufficient to charge an indorser. But when the note was dated at Albany, and the maker removed to Canada, a demand at Albany was held sufficient. (*Anderson v. Drake*, 14 Johns. R. 114.)

If a bill is drawn upon a drawee, domiciled in one place, and the bill

is payable in another place, and it is accepted by him, a presentment should be made for payment at the latter place. Thus, if a bill is drawn on drawees at Liverpool, payable in London, if accepted, the presentment for payment must be made in London, if any particular place is there pointed out, where payment may be demanded. If none is pointed out, and no person, upon due inquiries, can be found, by whom the bill will be paid, it may be protested in London for non-payment. But if the bill had not been accepted by the drawee, and it had been accepted *supra protest* by another party, then demand of payment must first be made of the drawee at Liverpool.

If a bill is drawn, payable at either of two places, and is accepted, the holder may present it at either place, at his option, and if not paid he has his remedy against the drawer and indorsers, upon protest and notice.

If a bill or note be made payable at a banker's or at a particular place, and is accepted, it should be presented for payment at that place, otherwise the drawer and indorsers will be discharged; but the acceptor or maker will not be discharged, if presentment is not made at the place designated, and on the day of maturity, and both will remain liable to pay afterwards.

It has been provided by statute in England, that an acceptance payable at a banker's or other place shall be deemed a general acceptance of the bill, unless the restrictive words "*and not otherwise or elsewhere,*" shall be added; so that no presentment or demand of payment at the banker's or other place is necessary, in order to charge the acceptor, unless those words have been added. But this does not alter the law in regard to the drawer or indorsers, who are not bound, unless a presentment has been made at the designated place, on the very day of the maturity of the bill.

In the Supreme Court of the United States, it is held, that, as between the holder and the acceptor, no demand at the place named in the acceptance is necessary to entitle the plaintiff to recover, though the want of such demand may affect the amount of damages and interest; but that to charge the drawer or indorsers of the bill, a demand at the place, at the maturity of the bill, is indispensable. (*Wallace v. McConnel*, 13 Peters, 136.) The same doctrine has been maintained in New York, where the court said, that, where a promissory note is made payable at a particular place on a day certain, the holder of the note is not bound to make a demand at the time and place, by way of a condition precedent to the bringing of an action against the maker. But if the maker was ready to pay at the time and place, he may plead it, as he would plead a tender in bar of damages and costs, by bringing the money into court. (*Caldwell v. Cassady*, 8 Cowen, 271.) And in another case (*Foden v. Sharp*, 4 Johns. R. 183) the court said, that the holder of a bill of exchange need not show a demand of payment of the acceptor, any more than of the maker of a note. It is the business of the acceptor to show, that he was ready at the day and place appointed, but that no one came to receive the money, and that he was always ready afterwards to pay.

This doctrine may, therefore, be considered as very general, if not universal, in America, for similar decisions have been made in Massachusetts, Virginia, New Jersey, and Tennessee.

When Demand at a Particular Place is required.

But the position of the drawer of a bill, and of the indorsers on bills or notes, is different. Their undertaking to pay is conditional. The receiver of a bill or note is understood thereby to contract with every other party who would be entitled to bring an action on paying it, that he will present it, in proper time, to the drawee for acceptance, when acceptance is necessary, and to the acceptor, or, in case of a note, to the maker, for payment, when the bill or note has arrived at its maturity, and is payable; that he will allow no extra time for payment to the acceptor or maker; and will give notice in a reasonable time, and without delay, to every such person, of a failure in the attempt to procure a proper acceptance or payment. Any default or neglect, in any of these respects, will discharge every such person from responsibility, on account of a non-acceptance or non-payment; and will make it operate, generally, as a satisfaction of any debt, demand, or value for which it was given.

If, therefore, the holder means to hold the drawer or indorsers, when the bill or note is payable at a particular place, he must strictly conform with the tenor of the instrument, and present it for payment at that particular place; but if he has done so, and payment is refused, he is not bound to make any personal or other demand upon the acceptor or maker at his dwelling-house, or at his place of business, even if he reside in the same town or city. This rule, however, holds only when upon the face of the bill it is *originally* made payable at a bank or any other particular place.

But if the bill be not so originally made payable at a particular place, but the acceptor made it so payable, it is a qualified acceptance, and if the holder has accepted of it, he did so at his own risk, and the drawer and indorsers will be discharged, unless the holder gave notice of this qualified acceptance to the antecedent parties, and had the bill protested for the non-acceptance according to the tenor of the bill, and such parties had, after notice, adopted or acquiesced in the conditional or qualified acceptance. (Story on Bills, § 240.)

Notes Payable at a Bank.

If a bill or note be payable at a bank, and the bill or note is at the bank on the day of payment, and if any person is there authorized to receive payment and give up the note, it is sufficient to charge the indorser; and if the banker be himself the holder, it is sufficient for him to see whether he has effects in hand, and proof that the note at maturity was in the bank and not paid is sufficient evidence of a presentment. And in such a case the plaintiff need not prove a non-payment; the burden of proving a payment is on the defendant; nor is it necessary, in such a case, for the holder to prove negatively that the maker had no funds in the bank. If he had funds in the bank at the time, it is matter

of defence, and must be proved by the indorser. And, on the other hand, the indorser would be discharged if the note were not at the bank on the day of payment, although a personal demand were made on the maker. (*Gillett v. Arnill*, 5 Denio, 88.)

To whom Presentment is to be made.

It is, generally speaking, requisite that presentment for acceptance should be made to the drawee personally, if possible, but in cases of presentment for payment it is not necessary. When, upon a presentment for acceptance, the drawee should not happen to be at his house or counting-room, but be temporarily absent, and no one there should be authorized to answer, the holder is not bound to consider it as a refusal to accept, but he may wait a reasonable time for the return of the drawee; and even waiting and presenting the bill anew on the next day will not be unreasonable. But no such delay to the next day is allowable, if the acceptor or promisor is not at home on the day when the bill or note becomes due; and if there be no one then ready at the place to pay the bill or note, it should be treated as dishonored, and protested for non-payment. However, if at the time of calling for payment the acceptor or promisor is out, the holder may wait and call again, if he choose, at any reasonable hour of the *same day*, before he is obliged to treat the bill or note as dishonored.

Bills and Notes payable on Demand.

If a bill or note is payable *on demand*, or is indorsed after it is *overdue*, payment should be demanded within a reasonable time, in order to charge the indorser. What is reasonable time depends upon circumstances, and is a question to be decided in each particular case. But such a note or bill must not be locked up, and kept out of circulation, or the loss of payment will fall upon the holder. If A take a bill or note payable to bearer on demand, for a preëxisting debt, and, instead of putting it into circulation or presenting it for payment in a reasonable time, keep it by him, and such bill or note be afterwards dishonored, the debt will be considered as extinct, and the loss will fall upon A. And it will make no difference, though the person by whom the bill or note was to be paid had stopped payment, and would not have paid it if presented, unless it could also be shown that the person giving the bill or note to A knew that the person who was to pay it had stopped payment, so as to make it a fraud in him to give it to A. (*Camidge v. Allenby*, 6 Barn. & Cres. 373.)

In Massachusetts it has been established, by statute, that a note on demand must be presented within sixty days, in order to charge the indorsers.

In other States cases have been decided different ways. It was held in New York, that a presentment for payment five months after the date of the note was unreasonable delay. And in Maine (see *Lord v. Chadbourne*, 8 Greenl. 198) it was held, that, where a note payable on demand is indorsed, and the indorser requests the indorsee "not to call

on the maker at present," this will not justify the indorsee in not calling on the maker till after six months from the time of indorsement. But it was said in the case of *Kneeland v. Hyde*, 2 Hall, 429, by the court, in New York, "that the rule requiring a presentment within a *reasonable time* was intended for, and is applicable to, negotiable instruments made *for commercial purposes only*. It was not intended for cases of suretyship, or notes of a like description." In this case the note was given for money borrowed "with interest from date," and interest on the note was paid at the end of the year and indorsed on the note, and payment was demanded two years after the date of the note. The indorser was held liable.

A note transferred after it is due is to be considered a note payable on demand, and is subject to the rules applicable to such a note. (*Van Housen v. Van Alstyne*, 3 Wendell, 75.)

CHAPTER VII.

PROCEEDINGS ON NON-ACCEPTANCE OF BILLS, AND NON-PAYMENT OF BILLS AND NOTES.

THE holder of a bill which has been refused acceptance, no matter whether this refusal has been absolute, or qualified, or conditional, and the holder of a bill or note which has been refused payment, must thereupon take certain requisite steps for the purpose of securing to himself the right of claiming the amount of the bill or note from other parties to the instrument. In the case of a bill the drawer and the indorsers, and in case of a note the indorsers, are conditionally liable to pay to the holder the sum of money mentioned in the bill or note. What these conditions are, we have already stated, and considered the duties of the holder of a bill or note before it has been refused acceptance or payment. We will now state the duties of the holder subsequent thereto.

Protest.

Immediately upon the drawee of a *foreign* bill refusing to accept it, or offering a qualified or conditional acceptance, it is the duty of the holder to have the bill duly protested, and notice thereof given to the drawer and the indorsers, to whom he looks for payment. If he neglects to do this, they will not be obliged to pay the bill. The same duty devolves upon the holder of a bill or note, in case of non-payment of the instrument.

A protest is a solemn declaration on behalf of the holder, drawn up by an official person, against any loss to be sustained by the non-acceptance or the non-payment of a bill. This protest is required to be made out and drawn up by a notary public, if there be one in or near the place where the bill is to be accepted or is payable. If there be none, then

it is sufficient, that a respectable inhabitant of the place should perform the duties of the notary, in the presence of two witnesses. The form of the protest should be in conformity with the law or usage of the place.

Manner of Protestiug.

Mr. Kyd, in his work on bills of exchange, describes the duties of the holder and of the notary public as follows: — “If the person to whom the bill is addressed, on presentment, will not accept it, the holder is to carry it to a person vested with a public character, who is to go to the drawee and demand acceptance in the same manner as before; and if he then refuse, the officer is there to make a minute on the bill itself, consisting of his initials, the month, the day, and the year, with his charges for minuting. He must, afterwards, draw up a solemn declaration, that the bill has been presented for acceptance, which was refused, and that the holder intends to recover all damages which he, or the deliverer of the money to the drawer, or any other, may sustain on account of the non-acceptance [or non-payment]. The minute is, in common language, termed the *noting* of the bill; the solemn declaration, the *protest*; and the person whose office it is to do these acts, a public notary; and to his protestation all foreign courts give credit. In making a protest, therefore, there are three things to be done, the noting, demanding, and drawing up the protest. But the noting is unknown in the law, as distinguished from the protest; it is merely a preliminary step, and has grown into practice only in modern times. The party making the demand must have authority to receive the money; and in case that be refused, the drawing up of protest is mere matter of form, the demand being the material part. The demand of payment of a foreign bill *must* be made *by the notary public himself*, and not by his clerk.”

It is not necessary in the United States that the noting be done at the place where the bill is presented, but it is generally done in the office of the notary.

English Form of Protest.

The form of an English protest for non-acceptance is as follows:—

“On this twenty-fifth day of November, one thousand eight hundred and fifty-one, I, Thomas Palgrave, Notary Public duly admitted and sworn, dwelling in Liverpool in the County of Lancaster and Kingdom of Great Britain, at the request of the holders thereof,

“Did exhibit the original bill of exchange, whereof a true copy is on the other side, to a clerk in the counting-house or office of ‘Messrs. Jones & Co., No. — Cook street, Castle street, Liverpool,’ [or to Mr. Jones, one of the firm of Jones & Co., as the case may be,] the persons on whom the same is drawn, and demanded acceptance thereof, when I received for answer that the said bill would not be accepted.

“Wherefore I, the said Notary, at the request aforesaid, have protested and by these presents do protest against the drawers and indorsers of the said bill and all others concerned for all exchange, re-exchar-

all costs, damages and interest, present and to come, for want of acceptance of the said bill.

"Which I attest.

"THOMAS PALGRAVE,
Notary Public."

"Protest 10s. 6d. (Seal.)

[Copy of the bill inserted with the names of all the indorsers.]

American Form of Protest.

The form of an American protest is as follows:—

[Prefix an exact copy of the bill of exchange or note, with the names of all the indorsers.]

COMMONWEALTH OF MASSACHUSETTS.

"Suffolk ss.

"On this twentieth day of September, in the year of our Lord one thousand eight hundred and fifty-two,

"I, John Brown, Notary Public, by legal authority admitted and sworn, and dwelling in the city of Boston, at the request of the holders [or give the names], of the city of Boston, went with the original bill of exchange, of which the foregoing is a true copy, to the counting-house of George White, and presented the same to the said White for acceptance, when I received for answer, that the same would not be accepted [or whatever the real state of the facts may be].

"Wherefore I, the said Notary, at the request aforesaid, have protested and by these presents do solemnly protest against the drawer of said bill of exchange, indorser, and all others concerned therein, for exchange, re-exchange, and all costs, charges, damages, and interest, suffered and sustained or to be suffered and sustained, by reason or in consequence of the (non-acceptance) of said bill of exchange.

"This done and protested in Boston aforesaid, and my notarial seal affixed, the day and year last written.

(L. S.)

"JOHN BROWN, *Notary Public.*"

It is highly important that a copy of the bill should be prefixed to all protests, with the indorsements thereon, *verbatim*, whenever practicable and that the reasons given by the drawee for non-acceptance or non-payment should also be stated in the protest. The time of drawing up the protest and the form of it, is according to the law of the place where the protest is made. In England and America, the protest is noted on the very day of the dishonor, although it may not be drawn up in form on that day. A mere noting of the bill, without an actual protest for non-acceptance or non-payment will not suffice.

A protest on part of the holder is essential upon the dishonor of a foreign bill of exchange, in order to hold the drawer and indorsers liable; even if he have lost or misplaced the bill of exchange, he should still apply for acceptance thereof, and, upon refusal, protest the bill. But if the protest be prevented from being made in due time, or at all, by an inevitable accident, or by superior force, or by a dangerous infectious

disease, it will be a legal excuse. The want of protest is also excused by proof that the drawer (or the indorsers) requested that, in case of the dishonor of the bill, no protest should be made; or that the drawer had no funds in the drawee's hands, and had no right to draw the bill. So promise to pay the bill, after a full knowledge of the fact that no protest was made, or a partial payment with such knowledge, will be a waiver of the protest.

In regard to *inland bills*, a protest is not, in general, necessary, unless it be made so by the local municipal law. We have already stated, that a bill drawn in one of the United States upon a resident in another State, is considered a *foreign bill*. (Kent's Comm., Lect. 44, p. 94.) Although the English law, requiring protest and notice of non-acceptance of foreign bills, has been adopted and followed as the true rule of mercantile law in the States of Massachusetts, Connecticut, New York, Maryland, Virginia, North Carolina, South Carolina, etc., the Supreme Court of the United States have held (see *Brown v. Barry*, 3 Dallas's R. 365) that in an action on a protest for non-payment on a foreign bill, protest for non-acceptance, or a notice of the non-acceptance, need not be shown, and that protest for non-payment is sufficient. This decision has been followed in Pennsylvania. (Kent's Comm., Lect. 44, p. 95.) But Judge Story, in his work on bills of exchange, remarks, that this would now be held law by the Court of the United States, only upon the ground of the local law of Pennsylvania as to bills drawn or payable there.

The place of protest for non-acceptance should be the place where the bill is to be presented for acceptance.

In Case of Non-payment.

We have stated before, that when a bill has been accepted, demand of payment must be made when the bill falls due, which is on the third day of grace, and we have also stated when and where, and by whom and to whom, it must be presented for payment. When payment is refused absolutely, or if only part payment is made, or if the tenor of the bill is not complied with, it becomes necessary for the holder that protest should be made, and due notice be given to the drawer and indorsers, stating the facts, exactly as in the case of non-acceptance of foreign bills. The place of the payment of the bill is that where the protest is to be made, and the law of that place is to govern, as to the time and formalities and acts of protest. By the law of England and America, the protest should be made on the last day of grace.

The Law of the Place of Contract governs.

We have already stated that the protest is to be made at the time in the manner, and by the persons, prescribed in the place where the bill is payable. But as to the necessity of making a demand and protest, and the circumstances under which notice may be required or dispensed with, these are incidents of the original contract, which are governed by the law of the place where the bill is drawn. They constitute implied conditions, upon which the liability of the drawer is to

attach, according to the law of the place where the contract was entered into. And if the bill is negotiated, the like responsibility attaches upon each successive indorser, according to the law of the place of his indorsement; for each indorser is treated as a new drawer. (Story on Bills, § 176.) The consequence is, that the indorser may render himself liable, upon a dishonor of the bill, for a much higher rate of damages than he can recover from the drawer. (3 Kent's Comm., 115.)

The drawer and indorsers do not contract to pay the money in the foreign place on which the bill is drawn, but only to guarantee its acceptance and payment in that place by the drawee; and in default of such payment, they agree, upon due notice, to reimburse the holder, in principal and damages, at the place where they respectively entered into the contract. (2 Kent, 459, 460.)

If, therefore, a negotiable bill of exchange is drawn in Massachusetts on England, and is indorsed in New York, and again by the first indorsee in Pennsylvania, and by the second in Maryland, and the bill is dishonored, the holder will be entitled to damages according to the law of the place where the respective contract has been entered into, and as the laws as to damages in these States are different (in Massachusetts it is *five* per cent., in New York *ten* per cent., and in Pennsylvania *TEN* per cent.), the holder could recover from the drawer only five per cent., whilst the indorser in Philadelphia would be liable to *TEN* per cent. damages. (See Story on Conflict of Laws, § 312.)

The acceptor's liabilities are to be determined by the law of the place where acceptance has been made. (See *Rothschild v. Currie*, 1 Adolph. & Ellis, New R. 43.) But where the bill is payable in a different place from that of acceptance, the law of the place of payment will govern as to the time when the payment of a bill is to accrue, so that the days of grace (if any) are to be allowed according to the law or custom of the place where the bill is to be paid. (*Bank of Washington v. Triplett*, 2 Pet. Sup. C. R. 30, 34.)

When a note or contract is made in one country for payment of money in another country, and by the laws of the latter a stamp is required to make the contract valid, and it is not so by those of the former, a stamp is not required, in such a case, to give it validity; for the instrument, as to its form and the solemnities and formalities attending its execution, is to be governed by the laws of the place of contract, and not by the laws of the place of payment; but the laws and usages of the place where the obligation is to be fulfilled must regulate the performance (Story on the Conflict of Laws.)

Notice to Parties.

Another important duty of the holder of a bill, in case of a failure of acceptance or payment, is, that he give immediate notice thereof to the drawer, or maker and indorsers, if he means to hold them answerable for the payment.

We have stated, that bills payable a certain number of days after date need not be presented for acceptance, although it is usual and prudent to do so, but if they have been presented for acceptance, and been refused,

then it becomes the bounden duty of the holder to make protest and give notice, in the same manner as he would upon a bill payable at so many days after sight.

The question is, What is *due notice* of the dishonor of a bill? As a promissory note may be considered as a bill of which the maker is the drawer, drawee, and acceptor, the same rules as regards *due notice*, upon the non-payment of a note, to the indorsers of the same, hold good and are applicable. What we shall state on the question of *due notice* will therefore equally apply to notice after non-acceptance of bills and the non-payment of bills and notes.

Notice must be given within a reasonable time after the dishonor and protest, if there be one, and due diligence must be exercised for this purpose. Where this reasonable time is positively fixed by the law of the particular country or State, it must be strictly followed. Although the protest must be made according to the law of the place of acceptance and payment, as the case may be, yet notice to the drawer must be given according to the law of the place where the bill was drawn, and to the indorsers according to the law of the place where the indorsements were respectively made. (Story on Bills, §§ 284, 285, 382 to 385; Chitty & Hulme on Bills, 9th ed., pp. 167-171.) In other cases, the reasonableness of the time of notice depends on the particular circumstances of each case; but in general it may be said, that where there is a regular intercourse carried on between the two places, whether by post or by packet-ships or steamers sailing at stated times, the notice should be sent by the next post or ship after the dishonor and protest, if a reasonable time remains for writing and forwarding the notice; and where there are none but irregular communications, that which is most probably and reasonably certain and expeditious should be resorted to. If the usual mercantile intercourse is by post or mail, that mode alone should be adopted, though others may concurrently exist. (Story on Bills, §§ 287, 382, 383.) But whatever be the mode of notice, *the time* of its transmission should be marked, because it must be proved with sufficient precision; for where a witness testified that he gave notice in two or three days after the dishonor, notice in two days being in time, but notice on the third day being too late, it was held not sufficient evidence to go to the jury, and the plaintiff was nonsuited, for the burden of proof of reasonable notice is on him. (2 Greenleaf on Evidence, § 186.)

If the post or mail is the proper mode of giving notice, it need not be sent on the day of dishonor, but it should go by the *next practicable post after that day*, having due reference to all the circumstances of the case. The same rule applies to successive indorsers, each one being generally entitled to at least one full day after he has received notice, before he is required to give notice to any antecedent indorser, who may be liable to him for payment of the bill or note. If the dishonor and protest be on Saturday, notice by the post or mail on Monday is early enough.

Notice to Persons living in the same Town.

We must, however, take into consideration whether the parties to

whom notice is to be given reside in or near the town or place where the dishonor occurs. In such cases the rule is, that notice, whether given verbally or by a special messenger, or by the local post called the penny post, should be given to the parties upon the day of the dishonor, or, at furthest, upon the succeeding day, early enough for it to be actually received by them before the expiration of the same day. Where, by general usage, the hours of business are known, such notice ought to be given within such reasonable time as may insure a delivery to the party on that very day. Chitty says: "When the parties reside in the same town, the holder, or other person to give the notice, must, on the day after the dishonor, or on the day after he received notice, cause notice to be actually forwarded by the post, or otherwise, to his next immediate indorser, sufficiently early in the day, that the latter may actually receive the same before the expiration of that day; and therefore, in London, if a letter containing such notice be put in the post-office after five o'clock in the afternoon of the second day and, in consequence, it is not received till the morning of the third day, the party who ought to have actually received the notice on the second day will be discharged. In London the local post (usually termed the two-penny post) forwards letters to be delivered in the metropolis three times within the same day, namely, at eight, two, and five o'clock; and letters put into any receiving-house before either of those hours ought regularly to be delivered the same day. But when out of the metropolis, and within ten miles, there are only two deliveries in each day to and from the metropolis; and a letter put into any proper office in London before five o'clock in the afternoon will be delivered on the same day, at any place within such distance of ten miles; and a letter put into a country office within that distance before four o'clock ought properly to be delivered in London on the same day. The holder, or party forwarding the notice, may give it verbally, or he may put a letter in the two-penny post, directed even to an indorser who resides in the same street. If he send notice by a private hand, it must be given or left at the indorser's residence before the expiration of the day; if to a banker, during the hours of business; but to another person, the hour is not material. If, by an irregularity in the post-office, a letter put in in due time be not delivered till the third day, it should seem that such laches will not prejudice."

American Rule.

The general rule in America is, that, where the residence of the party who is bound to give notice, and that of the party who is entitled to receive notice, are in the same city, town, or place, such notice put in the post-office is *not* sufficient, but it must be served *personally*, or be left at the house or place of business of the person to be notified. This rule has been expressly decided by the courts of several States. See *Green v. Darling*, 3 Shep. 143; *Kramer v. M'Dowell*, 8 Watts & Serg. 138, where the court say: "The rule is, that in the same town or city at least, unless when they become larger than Pittsburg, the notice to be given by one inhabitant to another must be served personally, or by leaving it at the house or place of business of the person to be notified."

And the Court in New York, in the case of *Ireland v. Kip*, 10 Johns. 490, and same case in 11 Johns. 231, the facts of the case being that notice had been put in the post-office of the city of New York both parties residing in New York. Spencer J., says, in delivering the opinion: "We are of opinion that the delivery of such notice at the post-office, unaccompanied with *proof* that it was *actually* delivered at the house, is not notice." And alluding to the case of *Scott et al. v. Lifford*, 1 Camp. 249, where the Court of King's Bench decided that notice sent by the penny-post was sufficient, without sending a special messenger, the learned judge proceeds: Whatever the rule in foreign countries may be, "the invariable rule with us is, that, when the parties reside in the same city or place, notice of the dishonor of bills or notes must be personal, or something tantamount, such as leaving it at the dwelling-house or place of business of the party, if absent. If the party to be served with a notice resides in a different place or city, then the notice may be sent through the post-office to the post-office nearest the party entitled to notice." The like doctrine may also be inferred from 2 Pick. 125, *New England Bank v. Lewis*.

It has been decided in Alabama, in the case of *Gindrat v. Mechanics' Bank*, 7 Ala. 324, that it is competent for a bank to establish a rule that notice of the dishonor of bills holden by the bank may be given through the post-office to parties resident in the same place, and the rule would be binding upon parties to all bills made payable at that bank.

But in Massachusetts and in New York it has been distinctly held "that when the indorser resides in the same place with the party who is to give the notice, the notice must be given to the party personally, or at his domicile or place of business." *Peirce v. Pendar*, 5 Met. 355; *Ransom v. Mack*, 2 Hill's R. 587.

But a question arises whether this same rule applies, where the party to whom notice is to be given lives in the same town, if it be at a distant village or settlement, where a town is large, and there are several post-offices in the different parts of it, as is frequently the case in our large American towns.

The Court in Massachusetts has not decided this point directly, and only suggested in the case of *Peirce v. Pendar*, 5 Met. 335, that "perhaps the same rule might not apply," but adds, "Of this we give no opinion." In the case of *Chicopee Bank v. Eager*, 9 Met. 583, the question came up, but the court avoided it, by deciding it upon the ground, that, when the bank is the holder of a note made payable at its banking-house, the indorser is bound by a notice of non-payment by the maker, given conformably to the established usage of the bank, though not conformably to the general law." There was evidence in this case, that the bank always sent notices by mail to the separate village, although it lay in the same town.

In New York, in the case of *Ransom v. Mack*, 2 Hill's R. 587, the court passed on the question and said: "The rule formerly was, that notice of the dishonor of a bill or note must be served personally on the drawer or indorser, or be left at his dwelling-house or place of business; and that rule still prevails in this country when the party to be

charged resides in the same place where the presentment or demand is to be made. But where the drawer or indorser resides in a different place from that in which the presentment or demand is made, the old rule, which required personal service, has been relaxed, and it is now well settled, that notice may be sent by mail. The only difficulty arises from the fact that the defendant resided in the same town, though at a distance of seven miles from the bank where the note was made payable." (The court then comment on the case of *Ireland v. Kip*, which we cited before, where there was no post-office at Kip's Bay, and the notice was left at the New York post-office.) "The rule laid down in that case has never been, and should not be, applied, without some qualification, to our large country towns, which often have more than one post-office, or where, if they have but one, a portion of the inhabitants live so far from it, that they usually receive their letters and papers through a neighboring office in another town. Notice may, I think, always be sent through the post-office, wherever there is a regular communication by mail between the place of presentment or demand, and the office where the person to be charged usually receives his letters and papers.

"Whether mail service is good or not, does not depend upon the inquiry, whether the person to be charged resides within the same legal district, but upon the question whether the notice may be transmitted by mail from the place of presentment or demand to another post-office, where the drawer or indorser usually receives his letters and papers. In this case, although the defendant lived in the same town where the demand was made, and there was but one post-office in that town; yet as he lived remote from the Sackett's Harbor office in that town, and there was another office in his vicinity to which he usually resorted for letters and papers, there can, I think, be no doubt that notice might have been well served by mail."

Notice where Parties do not live in the same Town.

When, however, the parties to whom notice is to be given do not live in the same town or place, the following rules will hold.

In the first place, it is not necessary, in any case, to give notice, either by post or otherwise, on the very day on which the dishonor and protest take place, although the holder is at liberty to do so if he choose. He is always allowed a whole day for this purpose, and therefore it is sufficient if he sends notice, by the post or otherwise, the next day, and he has the whole day for this purpose. For instance, if the third day of grace be on Thursday, and the bill or note is protested on Thursday for non-payment, the notice may be sent on Thursday, but must be put in the post-office on Friday, so as to be forwarded as soon as possible thereafter. If this second day should be a Sunday or other recognized holiday, like Fast or Thanksgiving day, or Fourth of July, notice need not be sent till the day after, so that, if a bill or note should be dishonored on the 3d of July, notice need not be sent till the 5th, and if the 5th should happen to be a Sunday, then the 6th would be in time. And this rule holds, even though there be no post, the succeeding day, for the

place to which he is to send. And, furthermore, it has been decided that the party is entitled to the whole day; at least, that eight or nine o'clock at night is not too late. (*Jameson v. Swinton*, 2 Taunt. 224.)

Where an indorser receives notice, and is entitled to reimbursement from other parties upon the bill or note, he is also bound, like the holder, to give notice of the dishonor to those parties within a reasonable time, and each successive indorser, receiving such, has until the next day to give or send notice to the other parties to whom he may and is entitled to look for reimbursement. If an indorser receives notice of the dishonor on Sunday (or other holiday), he may treat it as if he had received it on the next day, i. e. Monday, and the notice to be given by him to any prior indorser will be sufficiently early if given on Tuesday. (*Story on Bills*, § 293.) In other words, it is deemed sufficient, if notice is sent by the next post after twenty-four hours have elapsed since his own receipt of the notice of dishonor, Sundays and other holidays not being counted; and every successive indorser, who receives notice of the dishonor of a bill, is entitled to at least one full day after he has received the notice, before he is required to give notice of the dishonor to any antecedent indorser, who is chargeable over to him upon payment of the bill or note. And it makes no difference that all the parties, to whom notice is successively given, reside in the same town; each party so receiving notice will still be entitled to a full day to give notice to the antecedent parties.

And if a bill or note has been sent to an agent or banker, for the purpose of procuring the acceptance or payment of the bill, he, too, will be entitled to the same time to give notice to his principal or customer, and to the other parties to the bill, as if he were himself the real holder, and his principal or customer were the party next entitled to notice; and the principal or customer will be entitled, after receiving such notice, to the like time, to communicate notice to the antecedent parties, as if he received the notice from the real holder, and not from his banker or agent. (*Story on Bills*, § 292.) For instance, the United States Branch Bank at Portsmouth, holding a note payable at the United States Branch Bank in Boston, signed by Pickering and indorsed by Goddard, sent it to the Branch Bank at Boston for collection. Goddard resided at Boston. The bill being dishonored, the bank at Boston sent notice of it to the bank at Portsmouth by mail, and the bank at Portsmouth sent notice by mail to Goddard at Boston. There was no delay in sending these notices, but if the bank at Boston had been the holder, he must have been notified sooner, in order to charge him. The court held that he was seasonably notified. *Story, J.* said: "All that is required by law is, that the holder should give notice to the indorser in a reasonable time after he has knowledge of the dishonor, and that there should be no laches in getting that knowledge if an agent has been employed." *United States Bank v. Goddard*, 5 Mason, 366.

But where information of the dishonor of a bill is sent to an agent who is not a party to the bill, with a request for him to give notice to a party to the bill residing in the same place with him, the agent is not allowed till the next day to give the notice, but must give it on the same day on

which he receives it. For instance, the holders of a bill in Boston sent information to their agent in New York, by mail, of the dishonor of a bill, requesting him to give notice to the drawer, who also resided in New York. The mail arrives at New York early in the morning; but the agent did not give notice to the drawers until the next day after the arrival of the mail. It was held that the drawers were discharged by this delay. *Savage, C. J.*, in giving the opinion of the court, said: "Had this agent been a party to the bill, or had he been so only nominally, by having his name on the bill for the purpose of collection, he would have been justified in withholding the information one day. But as he was the mere agent of the plaintiffs, he should have given immediate notice." And he proceeds afterwards: "It is reasonable also, that, if a party chooses to give notice through an agent, he shall cause such notice to be given as early as the defendant would have received the same notice had it been sent by mail." (*Sewall v. Russell*, 3 Wend. 276.)

A party, however, may send notice by a special messenger, instead of taking the post or other ordinary mode of conveying letters; but if he does so, it is at his own risk, for it is indispensable that the notice should reach the party for whom it is intended on the same day (although not, perhaps, at as early an hour), as he would otherwise be entitled to receive it; for if it arrived a day later, the party will be discharged, as the above case shows.

To whom and where Notice must be sent.

We have already stated that the drawer of a bill, and every indorser of a bill or note, are entitled to notice of the dishonor. When there are several persons who are joint drawers or indorsers, but who are not partners, each is entitled to notice; but if they are partners, notice to either or any of the partners will be sufficient; and if any of the partners be dead, notice ought to be given to the surviving partners, and notice to the administrator or legal representative of the deceased partner alone is not sufficient. (*Story on Bills*, § 299.)

If the drawer of a bill, or the indorser of a bill or note, be dead at the time it becomes due and is dishonored, and there be executors or administrators at that time known to the holder, notice must be given to them; but if there be no executor or administrator at the time, a notice sent to the residence of his family is sufficient; and it is not necessary to give notice afterwards to executors or administrators subsequently becoming such. (*Merchant's Bank v. Birch*, 17 Johns. R. 25.) If the party entitled to notice has become bankrupt, and assignees have been chosen, notice to the assignees is proper, and will be sufficient. But if no assignees have been chosen or appointed, notice to the bankrupt will be sufficient. If the party entitled to notice be abroad temporarily, the notice should be left at his regular residence or domicile in his own country.

If the indorser of a note, a foreigner, before it falls due, inform the holder that he is going out of the country to a foreign port, which he mentions, it will not excuse the holder for not attempting to give him

notice. He should send notice to the place where the indorser said he was going. (*Hodges v. Galt*, 8 Pick. 251.)

If the party entitled to notice has changed his residence or domicile, and his new residence is known, notice must be sent to his new domicile. But if the new residence is unknown, and cannot, upon reasonable inquiry, be ascertained, then the notice will, in point of law, be dispensed with or excused. (Story on Bills, § 305.)

The general rule is, that, where it is not known where a party lives, due diligence must be used to find out. And where such diligence is unsuccessful, it will excuse want of notice. What is due diligence depends upon the circumstances of each case. We will give several decisions on this point, which may serve as a guide.

Merely inquiring at the house where a bill is payable, is not due diligence for finding out an indorser. (*Beveridge v. Burgis*, 3 Campb. 262.)

Inquiry should be made of some of the other parties to the bill or note, and of persons of the same name. Thus inquiring for the residence of the indorser of the note, of the maker and other indorsers, is evidence of due diligence to ascertain it. (*Preston v. Daysson*, 7 La. R. 7.)

In an action against the drawer of a bill drawn at Alexandria, D. C., on New York, the bill being protested for non-payment, two letters containing notice were immediately after put into the post-office at New York, one directed to the drawer at New York, and the other to him at Alexandria; and a third notice for him was left at the counting-house of the acceptors. It did not appear that any inquiries were made as to the drawer's place of residence. He, in fact, resided at Fairfield, in Connecticut, and this was publicly known, and particularly to one of the acceptors of the bill. It was held that the notice given was not sufficient; and that the drawer was discharged, because due diligence had not been used to ascertain his place of residence. (*Barnwell v. Mitchell*, 3 Conn. R. 101.)

And in another case (*Hill v. Varrell*, 3 Greenl. 233), a bill was drawn at New Orleans on a person in York, Maine, and payable in Boston. In an action against the drawer, it appeared that no inquiry had been made to find him, when the bill was dishonored, but notice was put in the post office directed to him at New Orleans. He in fact resided in York. The court held that due diligence had not been used, and Mellen, C. J., who gave the opinion of the court, thought that inquiry for the drawer should have been made by writing to the acceptor at York; and that if this had delayed the notice for a short time, it might still be evidence of due diligence.

From these cases it appears that there is no presumption of law that the place where a bill is drawn is the place of the drawer's residence. Therefore, if he do not in fact reside there, a notice sent addressed to him there is not sufficient, if no inquiry be made to ascertain his place of residence. In a case in South Carolina (*Moodie v. Morrell*, 1 S. Car. R. 307), a different opinion was expressed; namely, that the place where a note was drawn and indorsed shall be presumed to be the residence of both maker and indorser, for every mercantile purpose; and the use of due diligence to find out either of them there will answer the demands of the law on this subject.

But in Massachusetts the court have decided, in several cases, that due inquiry ought to be made of persons who may be supposed to know the residence of parties. We will cite several cases. In *Peirce v. Pendar*, 5 Met. 352, it was held, that although the notary testified "that he was not able to find the indorser or any body who could tell him where he was, that he inquired of the cashier of the bank and others, for the indorser's residence, but was unable to learn from any one where he then resided," yet as he did not make any inquiry of the maker or second indorser respecting the first indorser's residence, the notary had not used that reasonable diligence to ascertain the indorser's residence which would excuse the want of legal notice to him of the dishonor of the note.

So in *Phipps v. Chase*, 6 Met. 491, where an indorsed note, left in a bank for collection, is dishonored, and the cashier of the bank, not knowing the place of the indorser's residence, merely inquires therefor of a person having temporary charge of the post-office in the town where the bank is located, it was held that the cashier had not used due diligence to ascertain the residence of the indorser, and therefore, if due notice of non-payment is not given to the indorser, he is discharged.

When the indorser of a note dies before its maturity, it is necessary, in order to charge his estate, that notice of non-payment should be given to his executor or administrator, if there be any known to the holder, or who might be known to him on his using due diligence to ascertain. Where the notice in such a case was directed to the "Estate of Henry J. Oliver, deceased," and was put in the post-office at Boston for Roxbury, it was held to be a deficient notice, as an executor had been appointed at the time, who might have been ascertained upon proper inquiry. If the notice had been directed to "the legal representative," or to "the executor or administrator" of the deceased, without naming the executor, it might perhaps have been sufficient (see *Pillow v. Hardemann*, 3 Humph. Tennessee R. 538), because such a notice would be directed to an existing person, though not by name, yet by clear description, and that person would know that it was addressed to him. But a notice addressed to "the estate," is as applicable to the testator's heirs at law as to his executrix. But the holder of an indorsed note is only excused from giving notice to the executor or administrator of the indorser, when he neither knows, nor can by reasonable diligence know, whether there is one, or who he is, or where he resides. The use of due diligence to ascertain is all that is required. (*Massachusetts Bank v. Sarah H. Oliver, Executrix*, decided by the Supreme Court of Mass., March Term, 1853.)

In *Wheeler v. Field*, 6 Met. 290, on the last day of grace, on a note that was dated at New York, where the maker resided when the note was made, a notary public took the note to the office of F., the third indorser, to inquire for the maker and other indorsers, and was told that F. was out, but that one H., whose office was near that of F.'s, might give him information; whereupon the notary went to H.'s office; but the person who had the charge thereof knew nothing of the maker or first two indorsers. The notary then protested the note, without

making any further inquiry for the maker. It was held, in a suit by the holder against the third indorser, that due diligence had not been used to find the maker's last place of business or residence in New York, and that the indorser was discharged.

Decisions in New York.

The fact that a bill was dated at a certain place, is not evidence that the drawer resides there, so as to dispense with the necessity of making inquiries for his residence; and without due diligence in making inquiries in such a case, a notice sent to the place where the bill was dated will be insufficient. (*Carrol v. Upton*, 3 Comstock, 272.)

Notice of protest, sent by mail, directed to the drawer of a bill at the place where the bill was drawn, there being no inquiry as to the place of his residence, is not sufficient to charge him. In such a case *great diligence* is not required, but *some* inquiry must be made. (*Lowry v. Scott*, 24 Wend. 358.)

A notary, ignorant of the place of residence of the indorser of a bill, inquired of a subsequent indorser, who pretended to know the proper place, and whose interest it was to have notice sent there; but he designated the wrong post-office, and the notice was sent accordingly; it was held, that due diligence had been used, and that the notice was sufficient. (*Ransom v. Mack*, 2 Hill, 587.)

Whether a notice of protest sent by mail to an indorser who has changed his residence is properly directed, depends on the fact whether or not he was accustomed to get his letters at the place to which the notice was directed. Accordingly, where an indorser who had removed from L. to A. still lived only half a mile from the post-office in L., where he had previously received his letters, while the post-office in A. was two and a half miles from his residence, it was held, in the absence of proof as to where he in fact received his letters, that a notice directed to L. was sufficient. (*Hunt v. Fish*, 4 Barbour, 330.)

A bill was drawn and dated at New York, on persons residing there, who duly accepted it. The drawers, however, actually resided at Petersburg, Va. The bill was protested for non-payment, and on the same day, the clerk of the notary, after making inquiries, at the bank and elsewhere in New York, for the residences of the drawers, and being told that they resided at Norfolk, put two notices into the post-office, one directed to the drawers at Norfolk, and the other addressed to them in New York; it was held a sufficient notice. (*Chapman v. Lipscombe*, 1 Johnson's R. 204.)

Notice to an indorser, directed to the place where he resided when the indorsement was made, is sufficient to charge him, though in the time intermediate he may have changed his residence. Inquiries for the residence of the indorser are unnecessary, where the holder has good reason to suppose that he knows where it is. (*Bank of Utica v. Philips*, 3 Wendell, 408.)

Independent of the statute of 1835, respecting the direction of notices of dishonor of notes and bills, it is sufficient to direct a notice of dishonor to the city or town where the person sought to be charged resided at the

time he drew, made, or indorsed the instrument, unless he specifies thereon the post-office where he received his letters, and where there are several post-offices in the same town, it is not necessary to direct it to the post-office nearest the residence of the party. (*Remer v. Downer*, 23 Wend. 620.)

Where the holder of a note was apprised before it fell due that one of the indorsers was dead, and that his will had been proved, and was recorded in the surrogate's office, it was held, that a notice of non-payment addressed to the deceased indorser by mail, and not to his personal representatives, was *insufficient* to charge his estate. (*Cayuga Bank v. Bennett*, 5 Hill, 236.)

A note was payable at the plaintiff's bank, in the town of W., where the indorser did business, and received his letters. The indorser, however, resided in an adjoining town, where notice of protest was sent by mail; held sufficient, it not appearing that the plaintiff knew of any other place where the indorser received his letters, and the indorser not having specified where he wished notice of dishonor of the note to be left or sent. (*Seneca County Bank v. Neass*, 3 Comstock, 443.)

The cashier of a bank who indorses paper money for collection is a party to the same, and a notarial certificate which stated that, upon the next day after presentment, notices of protest, addressed to the drawer and indorsers respectively, were inclosed in an envelope and sent to the cashier, was held sufficient evidence of the protest in respect to all the parties, and of notice thereof to the cashier. (*Bank of United States v. Davis*, 2 Hill, 451.)

Where the drawer of a bill is partner of the house or firm upon which it is drawn, it is not necessary for the holder to prove *notice* of dishonor. (*Gowan v. Jackson*, 20 Johnson's R. 99.)

Where the indorsers and acceptors are members of the same firm, no notice of dishonor is necessary. (*Bank of Rochester v. Monteath*, 1 Denio, 402.)

If one of two co-indorsers, being joint payees of a note, but not partners, dies before maturity of the note, notice of dishonor must be given to the survivor, and to the personal representatives of the deceased, in order to charge the survivor. (*Willis v. Green*, 5 Hill, 232.)

Where the payee of a note not negotiable indorses in blank, notice to him of non-payment is not necessary. He stands to his indorsee in the relation of principal, and not of surety, and has no right to insist upon a demand of the maker and notice of non-payment. (*Seymour v. Van Slyck*, 8 Wend. 404.)

Notice of presentment and non-payment of a *check* is necessary, before an action can be brought on it against the drawer. (*Harker v. Anderson*, 21 Wend. 372.)

But it has been decided by the Court of Appeals in New York, in the case of *Bowen v. Newell*, that checks upon a bank made payable at a day different from that on which they are dated, are to be treated as bills of exchange, and as such they are entitled to three days' grace. To avoid protest for non-acceptance, and to insure payment on the day, they should be drawn with the words, "Without grace, acceptance waived."

The instrument in the above case was as follows:—

“New York, Oct. 5, 1849.

“Cashier of Thompson Bank:—Pay Zenas Newell, or order, two thousand dollars on the 12th instant.

(Signed,) B. SEARLS & SON.”

Indorsed, “ZENAS NEWELL.”

The Thompson Bank was in the State of Connecticut, the instrument was presented there for payment on the 12th of October, and, payment being refused, was on the same day protested, and due notice of such protest was given to the indorser. It was proved at the trial, that it was the uniform usage of the banks in Connecticut, and of the above-named bank, to pay such checks on the certain day named, and, in case of non-payment, to have them protested on that day.

The Court of Appeals held, that this instrument was a bill of exchange, and subject to days of grace; and that evidence of the usage of the banks in Connecticut was not admissible to show that, by the law of that State, the instrument would receive a different construction from that which would be given to it in New York. The demand of payment and the notice to the indorser were therefore held premature, and the indorser was held discharged.

Notice to and by an Agent, and his Liability.

Notice to a regularly authorized agent will be notice to the principal. But telling a man's attorney that a bill is dishonored, is no notice, unless the attorney has more than the usual powers. So where the name of an indorser on a note is signed by another person, as his attorney, under a power to indorse notes for him, a notice to the attorney is not sufficient to charge the indorser, the authority to indorse not being of itself an authority to receive notices. (*Richards v. Morgan*, 16 Martin, 89.)

Where an agent draws a bill in his own name, but for account of his principal, notice must be given to the agent, who is the drawer. Giving notice to the principal, who is not a party to the bill, is not sufficient. (*Grosvenor v. Stone*, 8 Pick. 79.)

But where a bill was drawn by the master of a ship, on account of the owners and by their authority, but in his own name, it was held that the owners were liable on being duly notified of the dishonor of the bill. (*Wallace v. Agry*, 4 Mason, 336.)

If an agent indorses a note or bill in the name of another, without authority, notice must be given either to the ostensible agent or the principal. (*Clay v. Oakley*, 17 Martin, 137.)

Agents for collection are holders for the purpose of giving notice of non-payment, or receiving the same; but such an agent, like any holder, is not bound to give notice to all the prior parties, but may give notice to his immediate indorser, who is to give notice to the other prior parties. (*Mead v. Engs*, 5 Cowen, 303; *Bank of the U. S. v. Davis*, 2 Hill, 451; *Howard v. Ives*, 1 Hill, 263.)

Agents who receive bills before maturity for collection are held to strict vigilance in making presentment for acceptance, and giving notice

of non-acceptance, and if chargeable with negligence, are subject to the payment of all the damages sustained by the owner. (*Allen v. Suydam*, 20 Wend. 321.)

A demand of payment of a note by a notary, or by a person having a parol authority for that purpose, or the lawful possession of the note, is sufficient; and the notary of the person authorized to make demand may give notice of dishonor. (*Bank of Utica v. Smith*, 18 Johns. 230.)

Where a bank receives a note for collection, it is bound to give notice of non-payment to the indorsers, and neglect to do it makes the bank liable. (*Bank of Utica v. M'Kinster*, 11 Wend. 475.)

Where a bank receives a note for collection, it is bound to employ a person of sufficient competency and fidelity for protesting the same. (*Smedes v. Utica Bank*, 20 Johns. 384.)

And it has been decided since in New York, that the bank is answerable for a mistake made by a notary employed by the bank in giving proper notice on the dishonor of a bill. The Court of Errors decided that a bank receiving for collection a bill of exchange, drawn in New York upon a person residing in another State, is liable for any neglect of duty occurring in its collection, whether arising from the default of its officers here, its correspondents abroad, or of agents employed by such correspondents.

This liability may be varied, however, either by *express contract*, or by *implication* arising from *general usage* in respect to such paper. It is competent, therefore, for the bank to show an *express contract*, varying the terms of its liability, or, in the absence of a judicial determination upon the point, to show that, by the usage and custom of the place, a bank thus receiving foreign paper is liable only for its safe transmission to some competent agent, and is not responsible for the acts or omissions of such agent, or of any subordinates employed by him.

The inquiry, however, in such case, is not as to the opinion of merchants, however general; as to the law of the case, but as to the usage and practice in respect to such transactions, or the *general understanding* of merchants as to the nature of the contract evidenced by their acts, so as to enable the court to give the contract a correct interpretation.

Where a debt was lost by the omission of a notary to give notice of the non-acceptance of a bill presented before maturity, it was held not to excuse a bank which had received the same for collection, that, by the law merchant of the place where the bill was presented, notice of non-acceptance was deemed unnecessary; but that, on the contrary, as the *lex loci contractus* governed in a case like it, it was the duty of the bank to have given the necessary instruction to its correspondents. The omission to give notice of non-acceptance happening through the default of a *commissioned public officer*, a notary, does not vary the rights of the parties; *pro hac vice*, he acted merely as the agent of his employers, and not in his *official capacity*. (*S. and M. Allen v. Merchants' Bank*, N. Y. decided in the Court of Errors.)

In a recent case (*Warren Bank v. Suffolk Bank*) decided by the Supreme Court of Massachusetts, at the March Term, 1853, but not yet reported, in which the plaintiffs sought to recover of the defendants for

negligence, in not duly demanding of the maker payment of a note, left with them by the plaintiffs for collection, and where the note in question was placed by defendants in the hands of a notary public, and all the alleged negligence was on his part, it was held as follows:—

“Where the nature of the business requires the employment of a sub-agent, the bank with which a note or bill is left for collection is not responsible for the neglect or default of such agents. This rule was sanctioned and applied by the court in *Fabens v. Mercantile Bank*, 23 Pick. 382, and *Dorchester and Milton Bank v. New England Bank*, 1 Cush. 177. The question that arises in the present case is, whether the duty of making a proper demand on the promisors of a note left for collection is one that devolves wholly upon the collecting bank, or one that may justify the appointment of a sub-agent, and whether, upon showing due diligence and fidelity in the selection of such sub-agent, the further responsibility for his defaults rests upon the sub-agent alone.

“Upon this point there has been some difference of opinion entertained by different judicial tribunals. The cases cited from New York are supposed to be adverse to such exemption from liability for the defaults of a notary public, to whom the note or bill has been committed by the collecting bank, for the purpose of demand and protest.

“Other legal tribunals have held that such delivery of the note to a competent notary public was a case of sub-agency, and without further responsibility. (*Baldwin v. Bank of Louisiana*, 1 Louis. Ann. Rep. 13; 4 Wharton, 103.)

“But all that is necessary to decide in the present case is the question of the competency and effect of certain evidence offered by the defendants to show the usage of the banks in Boston, as to the mode of making a demand in case of the non-payment of notes sent to them for collection.

“It was admitted by the courts of New York, that the collecting bank would not be chargeable for the default of a sub-agent, if there had been any understanding or agreement, express or implied, that the note was to be transmitted to a sub-agent for collection. The effect to be given to the usage of banks was particularly declared by this court in the cases of *Dorchester and Milton Bank v. New England Bank*, *supra*, and *Chicopee Bank v. Eager*, 9 Met. 583.

“In the present case the defendant offered to show that it was the invariable usage of the banks in Boston, including the Suffolk Bank, where notes have been sent to them for collection by other banks, if such notes were not paid at the proper time, to place them in the hands of a notary public for demand and protest, and that they had charged the plaintiffs, and the plaintiffs had paid, the fees of the notary in such cases.

“This evidence of the usage and course of business was proper, and ought to have been admitted. Those dealing with the bank, and especially the plaintiffs, as to whom knowledge of the course of business was shown to exist, are bound by it, and it would authorize a jury to find, if necessary, an implied agreement or assent to the appointment of such notary public as a sub-agent for the making a demand and protest, requiring only on the part of the collecting bank due diligence and care in the selection of a proper notary.

"This evidence was excluded as immaterial, and for this cause the verdict is to be set aside and a new trial had."

Where a bank receives a note for collection, it is bound to use reasonable skill in making the collection, and for that purpose is bound to make a reasonable demand on the promisor, and in case of dishonor to give due notice to the indorsers, so that the security of the note shall not be lost or essentially impaired by the discharge of the indorsers. As an agent, such bank is bound to the use of reasonable skill and ordinary diligence.

In general, the rules of law in regard to the presentment of bills of exchange and promissory notes for payment, and for giving notice to indorsers, in case of dishonor, are so plain and simple, so well known by notaries public, cashiers of banks, attorneys, and brokers, that any failure to comply with them, by an agent acting in behalf of another, would carry with it such proof of either want of skill or want of diligence, as to render him liable to his principal. It is, therefore, often laid down in general terms, that where the holder of a bill or note has lost his remedy, by these means, against a responsible party, and thereby sustained damage, he has his remedy against his agent.

But an agent is not liable for injuries that are caused by his mistake in any doubtful matter of law, or when the law depends on statute provisions so recently passed as not to be generally known, or on decisions of courts, either not promulgated at the time, or so recently given as not to be generally known among business men. (*Mechanics' Bank at Baltimore v. Merchants' Bank at Boston*, 6 Met. 13, 25, and 27.)

It is no part of the duty of a notary to give notice of protest, and the certificate of a foreign notary is no evidence of such notice. (*Bank of Rochester v. Gray*, 2 Hill, 227.)

The notarial certificate (in New York), to satisfy the statute, must show a presentment for payment by *the notary himself*. If it state that he caused it to be presented, it is inadmissible. (*The Onondaga County Bank v. Bates*, 3 Hill, 53; *Warnick v. Crane*, 4 Wend. 460.)

In this case, the court say, "The duties of a notary in presenting promissory notes and bills of exchange cannot be performed by his clerk or a third person. So in *Vandewall v. Tyrrell* (Mood. & Malk. 87), where a clerk presented the bill and afterwards drew up the certificate of protest, which was signed and sealed by the principal in the usual form, Lord Tenderden said it was a void protest."

Notice in Case of Guaranty.

If there is a guaranty on a bill or note, it is not absolutely necessary, as in case of an indorser, to give to the guarantor immediate notice of the dishonor of the bill or note, but it is expedient and advisable to do so. It is only incumbent upon the guarantee to make a proper demand of the maker of the note, and upon his default, to give notice thereof to the guarantor within a *reasonable* time afterwards. What is reasonable time depends upon the circumstances of each case, and is governed by the consideration, whether the guarantor has suffered any injury by the want

of an immediate notice ; if he has, then, to the extent of that injury, he will be discharged, but not beyond the injury or loss actually sustained by him. Thus, if the maker of a note is solvent when the note falls due, and becomes insolvent before notice of his default be given to the guarantor, the latter will be discharged, because of the entire loss of a claim which he might have enforced, if he had received due notice.

In Ohio a guarantor is entitled to notice and presentment to the maker. (See Bayley on Bills, Ch. VII., sect. 2, pp. 291-294, 5th edit.)

Where one contracts in the form of a *guaranty* upon the back of a promissory note, he cannot be made liable as indorser, nor can he insist on a demand and notice, or make the want of it a defence against an action. . (Brown v. Curtis, 2 Comst. 225.)

A guarantor of a promissory note, that is payable on demand, is discharged from his contract of guaranty by the omission of the holder to give him notice, within a reasonable time, of demand on the maker and non-payment by him ; provided the maker was solvent when the guaranty was made, and became insolvent before notice of non-payment was given ; and in such case, if notice be not given until fourteen months after demand on the maker, it is not within reasonable time. (Whiton v. Mears, 11 Met. 563.)

Form of Notice.

We have seen, that notice of the dishonor of a bill or note may be either *verbal*, at least where the parties are resident in the same town, or it may be by a written communication, left at the party's domicile or place of business ; and in this case it need not be given to him in person, it is sufficient to deliver it to some suitable person at his domicile or place of business ; and if it be sent by post or any other general conveyance, it is enough for the party to prove that he put the written notice, with the proper address, at the proper time, in the post-office, and it is then immaterial whether it actually reached the party entitled to notice or not.

No certain set of words or phrases is prescribed for giving such notice. All that is required is, that the notice contain a true description of the bill or note, so as to identify it, and that it states that it has been presented for acceptance, if it is a bill which has been dishonored by non-acceptance, or that it has been presented for payment, if it be an accepted bill or a note which has been dishonored for non-payment, and that it has been dishonored and protested for non-acceptance, or non-payment, as the case may be, and that the holder, or other party sending the notice, looks to the party to whom notice is sent for indemnity and satisfaction, or for payment. Nor is it essential that these statements should appear in positive and express words ; it will be sufficient if the language used imports it by a fair and reasonable interpretation. (Story on Bills, § 301.)

The form of notice has been the subject of frequent litigation, and it is of the utmost importance that notaries and bankers should be particular in their form. Many forms of notaries in different States merely state

that the note (describing it) has not been paid, or has been protested. According to the latest decisions in New York and Massachusetts, as well as in England, a notice ought to state also, that the note or bill was duly presented for payment at its maturity, and dishonored. But the holder may choose such language as he sees fit to convey this information, and is not bound by any certain set of words.

Before we cite the different decisions on this question, we would at once call the attention of the reader to the point, that, where a note or bill is payable at a bank, the note or bill being lodged at the bank, ready to be delivered up upon payment, and the promisor being obliged to pay at the bank, a neglect to call and pay the note is a dishonor of it, and no other special demand is necessary. A notice, therefore, that such a note is not paid, or is protested for non-payment, necessarily implies that the note has been dishonored, because the simple fact of non-payment implies demand and refusal of payment. But where a note is payable at large, it is necessary to state in the notice that *the note or bill has been duly presented, and its payment refused*, or that the instrument has been *dishonored*, which implies due presentment and refusal.

In an action brought by the United States Bank against the indorser of a note, dated July 20th, 1829, and payable at the office of the United States Bank at Chillicothe, in sixty days, it appeared that the notice of non-payment described the note correctly except in stating that it was dated September 20th, 1819; and it also appeared that there was no other note payable at the same place indorsed by the defendant, and having the same makers. It was held, that the notice was sufficient, as the defendant could not have been misled by it. (*Mills v. The Bank of the United States*, 11 Wheat. 431.)

And further, a notice sent to an indorser by a notary public, who had presented the note for payment, did not state who was the holder of the note, or at whose request the notice was sent. The notice was held sufficient. Parker, C. J., giving the opinion of the court, said: "No particular form is necessary; the great object of the notice is to put the party affected by it on his guard; and if he is informed of the two principal facts, that the note is dishonored, and that the holder looks to him for payment, he may easily acquire all other knowledge necessary for his safety." (*Shed v. Brett*, 1 Pick. 401.)

And in the case of *The Bank of the United States v. Carneal*, 2 Pet. Sup. Ct. R. 543, Story, J., giving the opinion of the court, says: "A suggestion has been made at the bar, that a letter to the indorser, stating the demand and dishonor of the note, is not sufficient, unless the party sending it also informs the indorser that he is looked to for payment. But when such notice is sent by the holder, or by his order, it necessarily implies such a responsibility over. For what other purpose could it be sent? We know of no rule which requires a formal declaration to be made to this effect. It is sufficient if it may be reasonably inferred from the nature of the notice."

It is not necessary, by our law, that the notice of the dishonor of a foreign bill of exchange should be accompanied with a copy of the protest (*Hooker v. Anderson*, 21 Wend. 372.)

In *Gilbert v. Dennis*, 3 Met. 495, the notice sent was as follows :—

“ *Boston, May 4th, 1838.*

“ MR. LEWIS DENNIS :— Sir : I have a note signed by C. E. Bowers, and indorsed by you, for seven hundred dollars, which is due this day and unpaid ; payment is demanded of you.

“ C. C. GILBERT.”

The court held this notice to be bad. In their opinion they say :—

“ In order to charge an indorser who is liable only conditionally for payment, in case of a dishonor of the note at its maturity by the maker, and notice thereof to the indorser, notice of such dishonor must be given him by the holder or his agent, or some party to the bill ; mere notice of non-payment which does not express or imply notice of dishonor, is not such notice as will render the indorser liable. This notice comes from an individual, and not from a bank. An averment, therefore, that it was unpaid, did not, by necessary implication or reasonable intendment, amount to an averment or intimation that payment had been demanded and refused, or that the note had been otherwise dishonored.”

“ Suppose a note payable at a bank, in terms or by the agreement of parties, or tacit agreement arising from usage or otherwise ; it is the duty of the promisor to pay it on the last day of grace. The dishonor of such note consists in the non-payment at the bank. If then, after the time of payment has elapsed, notice be given to the indorser, that the note is unpaid, it is notice that it is dishonored ; whereas in a case of a private holder, in regard to a note which requires presentment and demand to fix the holder with a default, notice in the same words that it is unpaid, would not necessarily imply that it was dishonored.”

In New York the same question has been decided, and particularly reviewed, in the case of *Dole v. Gold*, 5 Barb. R. 490. The notice there ran as follows :—

“ *Buffalo, Sept. 8th, 1847.*

“ DEAR SIR :— A note of \$ 22.50, made by Andrew Cole and payable to your order, and indorsed by you, is due this day, and *has not been paid*. You will therefore take notice that I am the owner and holder of said note, and look to you for the payment of the same.

“ Yours, &c.

C. R. GOLD.”

The court held this notice clearly defective, because it did not contain information that the note was dishonored, or in other words, that it had been presented for payment and payment refused. The court say : “ Whatever will show the dishonor is sufficient. Where a note is made payable at a bank, or other particular place, it is the business of the maker to have funds there at the time to take it up, and if he neglect to do so, he dishonors his note, and it is sufficient to inform the indorser of that fact. No personal demand of the maker is necessary. But the maker of a negotiable promissory note, payable at large, which may be transferred *ad infinitum*, without his knowledge, does not dishonor his note until, upon due presentment and demand, he refuses or neglects to

pay it. In such case, the holder must make a personal demand, or what is equivalent to a personal demand, of the maker, before he can claim, as against the indorser, that the note is dishonored. (Taylor v. Snyder, 3 Denio, 145; Gilmore v. Speis, 1 Barb. S. C. Rep. 158.) I confess I am unable to perceive upon what ground this rule can be called illiberal. It prescribes no particular form of notice, which business men must go to a law-book to learn, and which must be adhered to even at the expense of substance. It simply requires the holder, in such language as he may choose to adopt, to inform the indorser of the fact that the maker, on being called upon, has neglected to pay the note; that the contingency upon which the indorser's promise to pay the note depended, has happened, and that his liability has become absolute; or, in other words, to do what he agreed to do as the condition of having the indorser's security. This is a condition of the contract important to the indorser, whose rights are as worthy of protection as those of the holder, and I cannot see upon what principle the courts can deprive him of its benefits. It is no answer to say that the holder cannot recover in an action against the indorser, without proving the dishonor of the paper by the party primarily liable. The indorser is not bound by his contract to incur the trouble, expense, and business discredit of a lawsuit to find out his liability. He contracted for a cheaper, fairer, and more business-like mode of information, and he has a right to it, and by the rules of fair-dealing he has a right to rely on it. And I have no doubt that, if an indorser has been induced to pay the paper indorsed by him, by a false notice of its dishonor, he may recover back the money from the party who has thus fraudulently obtained it."

The cases of *Mills v. The Bank of the United States*, and the *Bank of Alexandria v. Swann*, both decided in the Supreme Court of the United States, have been frequently cited as warring with the above principle; but upon examination it will be found, that in both those cases the notes were payable at a bank, and hence the notice saying that the notes had not been paid was tantamount to their being dishonored. The words used by the judge in delivering the opinion must be taken with special reference to the facts in the case.

The law, no doubt, requires, at the present day, that the notice should contain the information that the note or bill was duly presented and payment refused, or, in other words, was dishonored. We give below several forms of notices, which may be safely used.

Another point in giving notice which must be carefully observed is, that the note or bill dishonored should be correctly described, because much litigation has been had on that point, and a mistake in the description of the instrument may still lead to litigation.

The general rule on this point is stated to be, that a mistake in stating any fact in a notice will not vitiate it, if the person to whom it is sent is not misled by the mistake. (Bayley on Bills, p. 253, 5th ed.)

In the case of *Mills v. The Bank of the United States*, 11 Wheat. 431, it appeared that the notice of non-payment described the note correctly, except in stating that it was dated "*September 20th*, 1819," when the note in fact bore date "*July 20th*, 1829"; it also appeared, that there

was no other note payable at the same place, indorsed by the defendant, and having the same makers. It was held that the notice was sufficient, as the defendant could not have been misled by it.

In another case, the notice to an indorser, which was sent on the last day of grace, January 6th, called the note "*Jotham Cushing's* note"; the name of the maker being in fact *Jotham Cushman*; and also said that the note became due January 3d. In an action against the indorser, Judge Parker directed the jury to find for the plaintiff, if they believed that the defendant must, from the notice, have necessarily known what note was intended, which they accordingly did. And the whole court considered the direction correct. (*Smith v. Whiting*, 12 Mass. R. 6.)

In New York several cases have been decided on this point, which seem to be conflicting. The main point decided in *Remer v. Downer*, 23 Wend. 629, is, that it was *not* a question to be left to the jury to decide whether the written notice which was sent was upon its face a sufficient notice to apprise Remer of the dishonor, and whether it was calculated to mislead him; but that the court must decide on the sufficiency of the notice. The court further decided, that notice of non-payment of a note, erroneous in amount, and directed on its face to a person other than the one sought to be charged as indorser, is not sufficient, although it be directed on the outside to the indorser of the note by his right name.

In the case of the *Cayuga County Bank v. Warden & Griswold*, 1 Comstock, 413, the note for the non-payment of which notice was given ran thus:—

"\$ 600. Ninety days after date, I promise to pay to the order of F. L. Griswold and E. A. Warden, six hundred dollars, for value received, at the Cayuga County Bank.

"*Auburn, N. Y., January 30th, 1848.*

S. WARDEN."

(Indorsed,) "F. L. GRISWOLD.
E. A. WARDEN."

The note at its maturity was in the plaintiff's bank, and was protested for non-payment. A notice of protest was served on each of the defendants, addressed to them separately, and was in these words:—

"\$ 600. *Cayuga County Bank, Auburn, May 3d, 1843.*

"SIR:—Take notice that S. Warden's note for *three hundred* dollars, payable at this bank, indorsed by you, was this evening protested for non-payment, and the holders look to you for the payment thereof.

"Your obedient servant,

"P. B. EATON, *Notary Public.*"

It was objected to the notice, that it misdescribed the note as to the amount, and in not stating that it was indorsed by the defendants jointly.

The court say: "It is well settled, in accordance with good sense, that an immaterial variance in the notice will not vitiate it. The variance must be such as that, under the circumstances of the case, the

notice conveys no sufficient knowledge to the indorsers of the identity of the particular note which has been dishonored.

"Now, having the accessory facts, namely, that this was the only note in this bank drawn by S. Warden and indorsed by the defendants, and the intimation conveyed by the figures '600' upon the margin of the notice, who can doubt but that this notice conveyed to the minds of the defendants the information that this identical note had been dishonored, although it misdescribed the note as it respects the sum for which it was made in the body of it?"

The case of *Remer v. Downer*, 23 Wend. 629, before cited, is in perfect accordance with this last case, as well as that of *Dole v. Gold*, 5 Barb. 290. In *Remer v. Downer*, the court say:—

"The judge should have decided the question himself whether the notice had been properly directed, so as to charge the indorser.

"The note in this case was drawn by Young for \$560, payable to Whitaker or order, at the Chemung Canal Bank, in eighteen months, indorsed by Whitaker and subsequently by Remer, and the notice which was sent was directed on the face of it to W. T. Williams, Cashier, informing him that Young's note for \$999.52, indorsed by him, was protested for non-payment, and that the holders looked to him for payment. This notice was not directed to Remer, and did not describe any note that he had indorsed for Young, either as to date, amount, or time of payment. Nor did it contain any intimation that it was the note which he had negotiated eighteen months before. It is perfectly clear, therefore, that this notice must be held to be insufficient.

"Had the note itself been correctly described, I should be inclined to the opinion that the misdirection of the notice on its face would have been cured by the correct direction on the outside of the letter. But a notice, in cases of this kind, which is barely enough to put the indorser upon inquiry, is not sufficient. It should be such a notice as to convey a distinct impression that the note indorsed by him has been duly presented to the maker for payment and has been dishonored."

A notice of non-payment must show that presentment was made at the proper time and place, and that payment was refused. A notice, therefore, which stated that the note was "*this day presented for payment*," it being without date, was not sufficient. (*Wynn v. Alden*, 4 Denio, 163.) The court said in this case: "Payment of a note should be demanded at its maturity, when it becomes due and is payable; and the notice should so state. The fact of such presentment and dishonor of the note may appear in express terms, or by necessary and reasonable implication from what the notice contains, and it must appear in one form or the other, or the notice will be defective. This notice only states that the note was presented '*this day*,' and payment refused. But the notice being without date, it is impossible to ascertain, from the paper itself, what day in particular was intended."

Where the notice stated, that the note was demanded on the *fourth* day of July, the indorser was discharged. (*Ransom v. Mack*, 2 Hill, 587.)

Where the notice stated that a note, payable at a bank, was *protested*

for non-payment on the day of its maturity, it was held a sufficient notice. (Cayuga County Bank v. Warden, 1 Comst. 414. See the same case above.)

A note payable at a bank in New York, being dishonored, notice was sent to the indorser in Massachusetts, by a notary public, informing him that a promissory note, describing it, had been protested for non-payment, and that the holders looked to the indorser for payment of the same; it was held by the Supreme Court of Massachusetts, that, if such letter was seasonably put into the post-office at New York, a jury might infer therefrom that legal notice had been given to the indorser of the non-payment and dishonor of the note by the maker. (Housatonic Bank v. Laflin, 6 Cushing.)

A notice of protest, which stated that the note "was, on the day that the same became due, duly protested for non-payment," was held to communicate, by necessary implication, the fact that a demand of payment was made on the proper day, and at the proper place, and was refused, and was therefore a valid notice. The notice must contain such a description of the note as might have enabled the indorser to ascertain its identity, and must also communicate the fact of its dishonor. The omission to state, in a notice of protest, the time when and the place where a note became payable, are immaterial, if the facts which are stated are sufficient to convey all necessary information. (Cook v. Litchfield, in New York Superior Court, 1852.)

The liability of an indorser of a promissory note or bill of exchange is governed in all cases by the law of the place where the indorsement is made, and by indorsement is to be understood the contract itself, not the mere act of writing the name on the back of the instrument; the place of its effectual transfer is the place of the contract, and the law which there prevails governs its construction. The maker and indorser, living in Michigan, sent notes, indorsed and signed there, to the agent of the maker, residing in New York, to be delivered to a creditor of the maker, residing in New York, in satisfaction of his debt; the contract of indorsement was held to have been made in New York, the agent of the maker being to all intents the agent also of the indorser, for the purpose of a transfer and delivery. (Ibid.)

We now give several forms of notices, which may be safely followed.

Notice where a Note, payable at a Bank or any other Place specified, has been dishonored and then protested.

§ —

Boston, —, 1852.

Please take notice, that a promissory note dated —, signed by —, payable to —, at the — Bank of — for the sum of — Dollars, indorsed by you, has been dishonored, payment having been duly demanded at its maturity and refused, and that the said note has therefore been protested for non-payment, and that the holder looks to you for the payment thereof.

Yours, &c.

————, *Notary Public.*

To —.

It will be observed that the day when the note was dishonored has not been specified, which the common forms do, saying "has *this day* been protested." If the notice should be made out and sent on the day after the note falls due, and the notice should read "has been *this day* dishonored," it might perhaps lead to litigation, in so far as it implies that demand had not been made on the proper day, which would discharge the indorser. The aim should always be to avoid even the possibility of litigation. The notice, however, should be dated. (See *Wynn v. Alden*, before cited.)

Notice of Non-acceptance of a Bill of Exchange to the Drawer.

Boston, Mass., ———, 185

Take notice that a bill drawn by ———, in favor of ———, and directed to ———, at ———, for the sum of \$ ———, dated at ——— the ——— day of ———, 185 —, and payable ——— days after [date or sight as the case may be], was this day duly presented to the said ——— for acceptance, and acceptance was refused. The said bill having been dishonored was duly protested [by me] for non-acceptance, and the holder looks to you for payment of principal, interest, damages, costs, and charges thereon.

Your ob't serv't,

—————, *Notary Public.*

To ———

Notice of Non-payment of a Bill of Exchange to the Drawer and Indorser thereof.

Boston, Mass. ———, 185

SIR:—

Take notice, that a bill drawn by ———, in favor of ———, for the sum of ———, dated at ———, the ——— day of ———, 185 —, payable ——— days after [sight or date as the case may be], directed to ——— at ———, and indorsed by, and accepted by ———, was duly presented for payment at its maturity to, and payment was demanded of, the acceptor, but was refused. The said bill being dishonored, the same was duly protested for non-payment [by me], and the holder looks to you for payment of principal, interest, damages, costs and charges thereon.

Your ob't serv't,

—————, *Notary Public.*

To ———.

If the notice be not given by the notary, the words after protested, "by me," must of course be omitted.

Form of Notice used in Virginia.

Richmond, Va. ——— 18

Take notice that ——— note for \$ ———, dated the ——— day of ———, 18 —, and payable ——— days after date to the order of ———, at the ——— Bank of ———, and indorsed by

_____, being due and unpaid, the same was this day presented by me at said Bank _____, and payment thereof then and there demanded, which was refused. Whereupon the said note was dishonored, and I duly protested the same for non-payment, and the holders look to you for payment as indorser thereof, for principal, interest, damages, costs, and charges.

Done at the request of the Cashier of the Bank of _____.

_____, *Notary Public.*

To _____.

Richmond, Va. _____, 18 . .

Take notice that a bill drawn by _____, in favor of _____, for the sum of \$ _____, dated at _____ the _____ day of _____, 18 _____, and payable _____ days after date [or sight] _____, and indorsed by _____, being due and unpaid, on this day the same was in the usual hours of business presented by me _____, and payment thereof then and there demanded, which was refused. Whereupon the said bill was dishonored, and duly protested by me for non-payment, and the holder looks to you for payment of principal, interest, damages, costs, and charges thereon.

Done at the request of the Cashier of the Bank of Virginia.

_____, *Notary Public.*

To _____.

Notice of Non-acceptance of a Bill of Exchange to the Indorsers thereof.

Boston, Mass., _____, 185 .

SIR : —

Please take notice, that a bill drawn by _____, in favor of _____, for the sum of \$ _____, dated at _____, the _____ day of _____, 185 _____, and payable _____ days after [date or sight as the case may be], directed to _____ at _____, and indorsed by _____, was duly presented for acceptance to the said drawee, and acceptance was refused. The said bill, having been dishonored, was protested for non-acceptance, and the holder looks to you for payment of principal, interest, damages, costs, and charges thereon.

Your ob't serv't,

_____, *Notary Public.*

To _____.

What will excuse the Want of Presentment or Protest and Notice of Dishonor.

When the presentment of a note or bill, at the proper time, was impossible by reason of unavoidable accident or by superior force, such as the prevalence of a malignant disease, the sudden illness or death of the holder, the stoppage of the mail or road by freshets, etc., war, or other circumstances interrupting the intercourse between place and place, — in

these cases the law excuses delay, and a subsequent presentment, when it becomes possible, will be good. And the like causes will excuse unseasonable notice of the dishonor to drawer or indorser, provided that due notice be given as soon as the above reasons for delay are removed.

Want of notice of dishonor to a drawer of a bill is excused, in the holders or any other party, if they are mere accommodation holders or indorsers to and for him, provided he does not sustain some special loss or injury from the want of notice.

If the drawer has no right to draw the bill, or no reasonable ground to expect the bill to be accepted, for example, if the drawer draws the bill, without having funds in the hands of the drawee, or any expectation of funds, or any agreement, on the part of the drawee, to accept the bill, he, the drawer, is not entitled to notice, and hence will not be discharged by the want of it. But if the drawer has a right to expect to have funds in the hands of the drawee to meet the bill, or if the drawee has agreed to accept the bill, or if, upon taking up the bill, he would be entitled to sue the drawee, or any other party on the bill; as if he be an accommodation drawer for the drawee or payee, or any subsequent indorsee; in such cases he is entitled to notice of the dishonor; and he will be likewise entitled to notice, although he has not sufficient funds in the hands of the drawee, to meet the whole sum mentioned in the bill. (Story on Bills, § 311, and Bayley on Bills, p. 306.)

If the drawer had effects in the hands of the drawee at the time when the bill was drawn, it has been held that he is entitled to notice of non-acceptance; although at the time when the bill was presented for acceptance and from that time until presentment for payment he had not any. (Orr v. Maginnis, 7 East, 359.) So, if he had effects in the hands of the drawee, when the bill was presented for acceptance, it has been held that he will be entitled to notice of non-acceptance, although he were indebted to the drawee greatly beyond the amount of such effects. (Blackhouse v. Doren, 2 Camp. N. P. C. 503.)

And if there be several bills in the hands of the same owner, becoming due on different days, the drawer is entitled to notice as to each, though the effects in the drawee's hands be not equal to any of the bills, and a neglect to give notice will discharge the drawer as to all. (Thackeray v. Blackett, 3 Camb. 164.)

But if the drawer has funds in the hands of the drawee, but voluntarily withdraws them, or if the drawer, before acceptance, orders the drawee not to accept the bill, or if he stops the goods on their way to the drawee, which were intended to discharge the bill, he will be held liable notwithstanding he received no notice. (Story on Bills, § 313.)

Waiver of Notice.

The party entitled to notice may waive his right to notice, and render himself responsible for the dishonor of a note or bill, although he received no regular notice. The general rule is, that if a person being ignorant of the facts in the case makes such a waiver, he is not bound by it; but if he make it with a full knowledge of all the facts, but through igno-

rance or under a mistake of the law, he will be bound by it; whether he has actually paid the bill or note, or only promised to pay it.

A promise, by the party entitled to notice, to pay the bill, and part payment of a bill or note, are deemed a full waiver of the want of due notice. But, in all these cases, the promise must be unequivocal, and amount to an admission of the right of the holder. If the offer of payment be conditional, and is not accepted, the waiver is not complete; or if the promise be qualified, the waiver cannot be regarded as absolute. This doctrine holds good both as to drawer and indorsers.

But a stipulation by an indorser to waive *notice* of dishonor does not dispense with the necessity of *demand itself*. (*Backus v. Shipherd*, 11 Wend. 629.)

Where an indorser is called upon to pay a note, and avows himself legally exonerated, but promises to pay the note and asks for time, *held*, a waiver of demand and notice. (*Leonard v. Gray*, 10 Wend. 104.)

Where the indorser, a few days before the maturity of the note, writes to the holder that the maker has failed, and represents the inutility of a suit, and asks indulgence, in such case demand and notice are unnecessary. (*Spencer v. Harvey*, 17 Wend. 489.)

Indorsers are, ordinarily, entitled to strict notice. But if the indorser is the real party to the bill, for whose accommodation alone it is drawn by the drawer and is to be accepted by the drawee, the latter having no funds of either in his hands, no notice may be required in order to charge him. (Story on Bills, § 314.) So if he is a mere accommodation indorser, and, at the time of his indorsement, he has received funds of the drawer to pay the bill, and secure him an ample indemnity, he will not be entitled to notice. But if he has received funds from the drawer for a part payment only, he will be entitled to strict notice; but the holder will be entitled to the funds, although no such notice has been given. (Story on Bills, § 316.) If there exist a prior agreement between any of the parties, dispensing with notice, either expressly or impliedly, no notice is necessary as to them.

The same rules apply to promissory notes.

The mere taking of *security* from the maker does not dispense with a regular demand and notice; *otherwise*, where the indorser takes sufficient *property* from the maker to indemnify, or takes an assignment of all the property of the maker. (*Spencer v. Harvey*, 17 Wend. 489.)

Accepting an assignment, before maturity of a note, of all the maker's property, as collateral security for indorsements, will be a waiver of notice, although it was of less value than the amount of the indorsements. (*Bond v. Farnham*, 5 Mass. 170.)

But taking security after maturity will not be a waiver of demand and notice. (*Tower v. Durell*, 9 Mass. 332.)

CHAPTER VIII.

GUARANTY OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

A GUARANTY is an undertaking by one person to be answerable for the payment of some debt, or the due performance of some duty or contract, by another person, who himself is primarily liable to pay or perform the same. The guaranty of a promissory note implies the contract on part of the guarantor, that, if the note be not paid, he will pay it upon a presentation to the maker and notice given him of the dishonor within a reasonable time, which period is measured by the fact whether the guarantor has suffered any injury in consequence of the delay or want of notice. If he has suffered such injury, then he is exonerated to the extent of the damage he has sustained.

The difference between an *indorser* and *guarantor* is, that the indorser contracts to pay the note, if dishonored, in case it is duly presented for payment to the maker at its maturity, and due notice is given to him of the dishonor, and not otherwise; but the guarantor contracts, that, upon the dishonor of the note, he will pay the amount upon a presentment being made to the maker, and notice given him of the dishonor *within a reasonable time*; and this reasonable time is measured by the fact whether, by the omission to make due presentment at the maturity of the note or bill, and to give him due notice of the dishonor, the guarantor has sustained any loss or injury. If he has, then he is exonerated to that extent; but if he has not sustained any injury, then he is liable for the whole amount of the note. Hence not the same punctuality in making presentment and giving notice in case of dishonor is required to charge a guarantor that there is to charge an indorser.

The question, however, now occurs, When is a person to be considered a *guarantor* and when an *indorser*? We will not enter into a discussion on the different and conflicting decisions that have been made in different States, and particularly in the State of New York, but state the law as recognized and established by the latest decisions by the highest courts. According to them, we may state that the true rule is, that, in all cases in which an absolute guaranty is indorsed in full upon a note or bill, the maker of the guaranty is to be held neither as a maker nor as an indorser, but as a guarantor simply of the note or bill; for instance, if the guarantor writes on the back or at the foot of the note, "For value received in cash [or whatever the consideration may be], I hereby guarantee the payment of the within [or above] note," signed, A. B.

But what the effect of blank indorsement on a note is, made by a person who is not the payee, we shall state more at large. We will first state when a note is considered a joint and several, or a joint note.

Where a note is made in the names of two persons and is signed by both, the one "as principal," and the other "as surety," it is to be deemed the joint note of both as to the payee and subsequent parties. If the language be, "We jointly and severally promise," it is the joint and several note of both. So if two persons sign a note drawn in these

terms, "I promise to pay," and one signs "as principal," and another "as surety," it will be the joint and several note of both. (Story on Promissory Notes, § 466.)

And if the note be drawn in the usual form, "I promise," etc., and signed by one person as maker, and below his signature another person should, on the face of the note, write the words, "I acknowledge myself holden as surety for the payment of the demand of the above note," and both sign the note at the same time, it has been held that both the principal and the surety were to be deemed joint contractors and joint makers of the note. (*Hunt v. Adams*, 5 Mass. 358.)

But if the contracts had been entered into at different times, the contract of the surety would have been deemed in the nature of a guaranty collateral to the note, and governed accordingly; that is to say, it would be treated as an independent promise, and be within the statute of frauds; and a distinct consideration should appear upon its face, according to the English and New York statute, or at least be proved according to the Massachusetts law, to make it an available contract. (Story on Promissory Notes, § 467.)

In the case of *White v. Howland* (9 Mass. 314), A made his note payable to B or order, and C and D indorsed it in these words: "For value received, we jointly and severally undertake to pay the money within mentioned to the said William White." It was held that each of the indorsers was to be treated as a joint and several promisor with A, and that the effect of the signatures of C and D was the same as if they had signed the note on the face of it as sureties.

So where a note was written, "We, A, as principal, and B, as surety, promise," etc., and the note was signed by A, and indorsed by B, the latter was held liable as joint maker. (*Palmer v. Grant*, 4 Conn. R. 389.)

In New York, in the case of *Allen v. Rightmore*, 20 Johns. R. 365, it was held, where the payee of a note indorsed thus: "For value received, I sell, assign, and guarantee the payment of the within note to A, or bearer," — that this was an absolute undertaking, and that the payee was liable, in default of the maker to pay the note, without notice of dishonor.

In later cases, the New York courts went so far as to hold, where a note was made by E. and W., payable to W. or bearer, and before delivery P. guaranteed the payment by an indorsement thus: "For value received I guarantee the payment of the within note, and waive notice of non-payment," — that P. was liable as a joint and several maker of the note. (*Lequer v. Prosser*, 4 Hill, 420.) A like decision was made in *Monrow v. Durham*, 3 Hill, 584; *Curtis v. Brown*, 2 Barb. 51; and several others.

But this doctrine of construing a guaranty into a promissory note to pay money absolutely and at all events is not borne out by later cases, and it may be said that the above is no longer the New York rule, but that, where a party indorses a note or bill with a guaranty in full, it is not a promissory note, but a special promise, in the words of the statute, to answer for the debt of another person. (See *Hall v. Newcomb*, 7

Hill, 416; Spies v. Gilmore, 1 Comst. 321; Brown v. Curtis, 2 Comst 225; Hall v. Farmer, 5 Den. 484.)

The New York statute provides, that every special promise to answer for the debt, default, or miscarriage of another person shall be void, unless such agreement, or some note or memorandum thereof, *expressing the consideration*, be in writing, and subscribed by the party to be charged therewith.

The Massachusetts statute provides, that no action shall be brought to charge any person upon any special promise to answer for the debt, default, or misdoings of another, unless the promise, contract, or agreement, or some memorandum or note thereof, shall be in writing and signed by the party to be charged; but the *consideration* of any such promise, contract, or agreement need *not* be set forth or expressed in the writing, signed by the party to be charged therewith, but may be proved by any other legal evidence.

Under the New York statute it has been decided, that, where A made a note payable to B, and C indorsed it thus: "I guarantee the payment of the within," — the guaranty was void, as no consideration for the promise was expressed in writing. (Hall v. Farmer, 5 Den. 484; and S. C. 2 Comst. 533.) And in a recent case (Brewster v. Silence, not yet reported) it was decided by the Court of Appeals in New York, that where a guaranty was written at the foot of a note, in these words: "I hereby guarantee the payment of the above note. J. Silence," — that the undertaking of the defendant was collateral to that of the maker of the note, and therefore within the statute of frauds, and void for want of the expression in the writing of the consideration. In this case, the note was drawn and executed by the maker, and the guaranty signed by the defendant, at the same time and before it was delivered; and the consideration of the note was a span of horses, and the sale was made on condition that defendant would guarantee the note of the purchaser for the price.

It is now, therefore, established in New York, by the highest court, that, under the statute, the consideration of a guaranty must be expressed, no matter whether the collateral undertaking for another person was made at the time when the debt of the principal was created, or at any time afterwards. The former leading case of Leonard v. Vredenburg, (8 Johns. 29) can be considered law no longer.

The law of England, like that of New York, requires that both the promise and its consideration must be expressed (see Wain v. Warlters, 5 East, 10); but it now differs in its application from the statute in New York in this respect, — that it is held in England, that wherever the promise to pay the debt of another is collateral to the contract of the original debtor, but is the ground of credit given to him, there need be no other consideration for the guaranty than that moving between him and the creditor, and consequently none need be expressed; for instance, if A lets B have goods only on condition that C guarantees the payment for the same, and if thereupon B makes the note and C guarantees it by writing, "I guarantee the above," this would be a good guaranty, and no further consideration need be expressed.

It has, however, been decided in New York, that it is a sufficient expression of the consideration to satisfy the statute of frauds, to set forth in the writing that the promise is *for value received*. (*Watson's Executors v. McLaren*, 19 Wend. 363; *Douglas v. Howland*, 24 Wend. 44.) Judge Kent, however, declares that these decisions appear to reduce the statute requisition of setting forth the consideration to a mere formality. (Comm. III. p. 123, note *a*.)

The law of Massachusetts, that the consideration need not be expressed in writing in a guaranty, has also been adopted in North and South Carolina, Maine, Vermont, and Connecticut.

Maryland and New Jersey have adopted the English rule.

It was held in Massachusetts, in the case of *Oxford Bank v. Haynes*, (8 Pick. 423,) where A made a note payable to B, and C indorsed it after it was made with the words, "I guarantee the payment of the within note," that the contract of C was a guaranty, and that it was not susceptible of doubt that C was not an original promisor.

Guaranties in Blank.

We shall now state the law in regard to indorsements of guaranty in blank, that is, when negotiable paper is indorsed in blank by another person than the payee.

In Massachusetts it is well established as law, that, if a person indorses a negotiable note at the time it is made, the indorser is liable as an original promisor, or joint maker. (*Baker v. Briggs*, 8 Pick. 122; *Austin v. Boyd*, 24 Pick. 64.) But if the third person puts his name upon the note after its date, he will be liable as guarantor, if there was a consideration for the indorsement, and the payee or holder may write over the signature such an agreement as he will be able to establish, thus supplying, by parol proof, the agreement itself and the consideration. (*Tenney v. Prince*, 4 Pick. 385; *Union Bank v. Willis*, 8 Met. 505.) If there is no date to the indorsement, the legal presumption is, that all the names were signed at the time of the date of the note. (*Benthall v. Judkins*, 13 Met. 265.) The same doctrine prevails in New Hampshire and Vermont. (*Flint v. Day*, 9 Verm. R. 345; *Martin v. Boyd*, 11 New Hamp. 385.)

And such an indorsement, made two days after the inception of the note, but according to a previous arrangement, was held to make the party liable as original maker. (*Moies v. Bird*, 11 Mass. 436.)

Where, the day after the making of a note, a third person indorsed it, to enable the payee to get it discounted, and the payee afterwards wrote his name over such indorsement, and transferred the note, such third person was held liable only as indorser. (*Pierce v. Mann*, 17 Pick. 244.)

Where a note, *not negotiable*, is indorsed in blank by a third party, and this indorsement is made at the same time the note is made, the indorser is held liable as an original promisor or maker of the note. But if such an indorsement on such a note is made subsequently, and upon a transaction distinct from the original making of the note, the indorser

is treated only as a guarantor; but it is necessary that a distinct and valuable consideration should be proved, and then, if so proved by parol evidence, the blank indorsement can be filled up according to the proofs. (*Allen v. Kittredge*, 7 Mass. 233; *Tenney v. Prince*, 4 Pick. 385.)

In New York it has been held, that, in cases of *negotiable* notes, the third party indorsing the note when it is made is to be treated in the character of a strictly *commercial* indorser, and not as an original promisor or as a guarantor. (*Seabury v. Hungerford*, 2 Hill, 80; *Hall v. Newcomb*, 3 Hill, 433; and *S. C.* 7 Hill, 416; *Spies v. Gilmore*, 2 Comst. 322.) Due notice of dishonor must therefore be given to such indorsers.

But, where the note is *not* negotiable, the court will write over the indorsement such a contract as will conform with the intentions of the parties, as shown by parol evidence, and the indorser in blank will be held accordingly. In *Seabury v. Hungerford*, 12 Hill, N. Y. R. 80, Mr. Justice Bronson, in delivering the opinion of the court, said: "If the note had not been negotiable, or if, for any other reason, the case had been such that the defendant could not, by the exercise of proper diligence, have been charged as indorser, and there had been an agreement that he would answer in some other form, then the plaintiff might have written over the name such a contract as would carry into effect the intention of the parties. When a contract cannot be enforced in the particular mode contemplated by the parties, the courts, rather than suffer the agreements to fail altogether, will, if possible, give effect to it in some other way. But they never make contracts for parties, nor substitute one contract for another."

In Louisiana it is held, that when a person, not a party to a note, puts his name on the back of it, he is presumed to bind himself as surety. (*McGuire v. Bosworth*, 1 Robinson's Louis. R. 248.)

Guaranty, when negotiable.

Where the guaranty is not made to A or order, or where it contains the name of no person on it to whom it is made, it will be construed to be limited to the first person who advances money on the strength of the guaranty. Where the guaranty is indorsed on the back of the note, and is made negotiable, as to A or order, or to A or bearer, it acquires a general negotiable character, and a subsequent holder may maintain a suit thereon. (*Watson's Ex'ors v. McLaren*, 19 Wend. 557.) And such a guaranty, it seems, amounts to the making of a new negotiable note, and the guarantor may be held as maker. (See Story on Prom. Notes, § 484.)

Discharge of a Guaranty.

A guarantor may be discharged by acts of negligence on the part of the person to whom the guaranty is given. The following acts will so discharge him:—

1. The neglect of presentment and notice, if he is apparently injured

by such neglect. If he has thereby sustained any partial loss, he will be discharged to the extent of the loss; for instance, if the maker was in good credit at the time of the maturity of the note, and has since failed, he will be discharged if no due presentment to the maker has been made, and notice been given him.

2. The guarantor will be discharged by any act of the holder which will discharge the maker.

3. Or by the holder's giving time to the maker, and thereby increasing the risk of the guarantor.

4. If the holder surrenders any collateral security, given by the maker, without the consent of the guarantor.

CHAPTER IX.

NOTES AND BILLS LOST OR DESTROYED.

If a promissory note or a bill of exchange has been lost or destroyed, the holder must, nevertheless, make demand of payment at its maturity, and, in case of non-payment, give due notice to the antecedent parties. But whether the promisor or acceptor and indorsers can be compelled to make payment, without a delivery or production of the note or bill, is a question on which the authorities in America differ. In England it has been held, that the holder cannot recover in a court of law, but only in a court of equity, on a negotiable note or bill lost or destroyed.

A distinction is had between negotiable and non-negotiable instruments, or those which have been specially indorsed, so that no person but the holder, who sues, could have acquired a right to sue thereon. In the latter cases, the note or bill may be recovered at law. (*M'Nair v. Gilbert*, 3 Wend. 344.)

And in an action on a lost note, where the evidence does not prove affirmatively that it is negotiable, the presumption in New York is held to be that it is not negotiable, and the plaintiff is therefore entitled in such case to recover. (*Ibid.*)

If a bill or note transferable by delivery be lost, the loser should give immediate notice thereof to the drawee, or persons who are to pay it; and if such persons afterwards pay it to a person who has not taken it *bonâ fide*, or paid value for it, they will be responsible to the loser. (*Lovell v. Martin*, 4 Taunt. 799.)

If the note or bill lost is negotiable and transferable when lost, it has been held in some States that a suit at law is maintainable against the maker, in others that it is not, and again in others it has been held that the holder may recover at law, provided he executes a proper instrument of indemnity.

It was held in Massachusetts, that, where a note has been stolen from the payee, he may still prove his demand against the maker, and enforce payment; the court, in such case, prescribing the bond to be given to the maker. (*Fales v. Russell*, 16 Pick. 315.)

But if a bill or note be destroyed by fire or other accident, an action may be brought thereon for recovery. (Bayley on Bills, p. 413.)

FORGED INSTRUMENTS.

When the signature of the drawer of a bill of exchange is forged, and the bill is accepted by the drawee, the latter will be bound to pay the same to a *bonâ fide* holder; and if he has paid it, he cannot recover back the money from the person to whom he paid it, although he cannot recover it back from the reputed drawer. The same doctrine applies to an acceptor *supra protest*, as to the signatures of the parties for whose honor he accepts.

But if the signature of the payee, or of any other indorser, be forged, and even if the drawer is at the same time payee and indorser, and his signature be forged, in these cases the acceptor is not bound to know their signatures, and if the indorsement under which the holder claims is forged, the acceptor is not bound to pay the bill; and if he does, the real owner is entitled to recover the amount from him and the holder. If a person not a party to a bill pays it for the acceptor, or indorser, whose name is forged, he may recover back the money from the person to whom he paid it, if he gives notice thereof on the same day to the holder. But if he does not discover it or give notice until the next day, then he is not entitled to recover back the money from the holder.

But if an indorser pays the bill under a forged indorsement of the name of a prior indorser, or of the drawer, he cannot recover back the money from any subsequent indorsee to whom he paid it, because his indorsement admits the genuineness of the antecedent indorsements, and that of the drawer. (Story on Bills, § 451.)

In cases of promissory notes, if the signature of the payee, or other indorser, under whom the actual holder claims, is forged, and the maker pays the note, such payment to the holder will be null and void, and he will be entitled to recover back the money from the holder. So, if the payee should pay the note to the holder under a subsequent forged indorsement, he may likewise recover back the amount.

But if a subsequent indorser should pay the amount to the holder, where the signature of the maker or of a prior indorser is forged, he could not recover it back, because every indorser warrants the genuineness of the signatures of the antecedent parties, both of the indorsers and maker. (See Story on Notes, § 387.)

Therefore, before the maker or an indorser pays a note, he should be satisfied that the signature of the payee or other indorser under whom the actual holder claims is a genuine signature, for if it be a forgery, the payment would be a nullity.

DAMAGES TO BE RECOVERED.

When the holder of a bill of exchange has complied with all the requisitions of the law, upon the dishonor of a bill, either for non-acceptance or non-payment, he is entitled to an immediate recourse against the

drawer, acceptor, and indorsers or guarantors, and to a full reimbursement of all the damages sustained by him. These different parties are liable according to the law of the place where they entered into their respective contracts; namely, the drawer according to the law of the place where the bill is drawn; the acceptor according to the law of the place of acceptance; and the indorsers and guarantors according to the law of the place where the indorsements and guaranties were made.

The acceptor, upon non-payment of the bill, is ordinarily liable to the holder only for the principal sum, and the expenses of the protest, and interest thereon from the time of the maturity of the bill, and he is not liable for reëxchange. But if the acceptor has expressly or impliedly agreed with the drawer, or with any indorser, for a valuable consideration, to pay the bill at its maturity, and has failed so to do, and the drawer or indorser has been compelled to take up the bill, and pay damages, and other expenses, he may perhaps be liable to the drawer or indorser for all such damages and expenses. (See Story on Bills, § 398, and Bayley on Bills, p. 380.)

The drawer and indorsers of bills of exchange are liable to the holder for the principal sum, and interest, and the damages and expenses incurred by the dishonor. The interest is due according to the legal rate allowed at the place where the bill is payable; and the expenses are the ordinary cost of protest and other incidental expenditures, such as postage, commission, and brokerage, if the party has been obliged to pay the holder, in consequence of the acceptor's refusal.

The damages, in the absence of any positive rule, which, however, exists in nearly all the States of the Union, are ascertained by the rate of reëxchange between the country where the bill is accepted and the country where the bill is drawn, in case of the drawer; and between the former and the country where the bill is indorsed, in the case of the indorser. If the bill has been in part paid by the acceptor, damages and interest are to be deducted in proportion.

By reëxchange is meant the amount for which a bill can be purchased in the country where the acceptance is made, drawn upon the drawer or indorser in the country where he resides, which will give the holder of the bill protested a sum equal to the amount of that bill at the time when it ought to have been paid, together with his necessary expenses and interest.

The full indemnity of the holder, hence, requires him to draw for such an amount as will make good the face of the bill, together with interest from the time it ought to have been paid, and the necessary charges of protest, postage, and broker's commission, and the current rate of exchange at the place where the bill was to be demanded or payable, or the place where it was drawn or negotiated. The law does not require an actual re-drawing, but it gives the holder the right to recover what would be the price of another new bill, with interest, and the necessary expenses, including the amount, or price, of the reëxchange. But the indorser of a bill is not entitled to recover of the drawer the damages incurred by the non-acceptance of the bill, unless he has paid them, or is liable to pay them. (3 Kent's Comm., Lect. 44.)

In order to avoid the difficulty of ascertaining what is the true rate of exchange, most of the States of the Union have provided by statute a certain fixed sum, in the place of damages and reëxchange.

The law in the different States in this respect is as follows :—

Maine.

The damages on bills of exchange negotiated in Maine, payable in other States, and returned under protest, are as follows (R. S. 510) :—

1. New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, 3 per cent.

2. New Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia, South Carolina, Georgia, 6 per cent.

3. North Carolina, Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, Texas, Wisconsin, 9 per cent.

Foreign Bills. The damages on foreign bills of exchange returned under protest are 10 per cent.

New Hampshire.

No statute in force in this State allowing damages on foreign or domestic bills returned under protest.

Vermont.

There is no statute in this State in reference to damages on protested foreign or domestic bills of exchange.

Massachusetts.

The damages on bills of exchange negotiated in Massachusetts payable in other States, and returned under protest, are as follows :—

1. Bills payable in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, or New York, 2 per cent.

2. Bills payable in New Jersey, Pennsylvania, Maryland, or Delaware, 3 per cent.

3. Bills payable in Virginia, District of Columbia, North Carolina, South Carolina, or Georgia, 4 per cent.

4. Bills payable elsewhere within the United States or the Territories, 5 per cent.

5. Bills for one hundred dollars or more, payable at any place in Massachusetts not within seventy-five miles of the place where drawn, 1 per cent.

Foreign Bills.—The damages on foreign bills of exchange returned under protest are as follows :—

1. Bills payable beyond the limits of the United States (excepting places in Africa beyond the Cape of Good Hope, and places in Asia and the islands thereof) shall pay the current rate of exchange when due, and five per cent. additional.

2. Bills payable at any place in Africa beyond the Cape of Good Hope, or any place in Asia or the islands thereof, shall pay damages, 20 per cent.

Rhode Island.

The damages on bills of exchange, payable in other States and returned under protest, are uniformly 5 per cent.

The damages on *foreign bills of exchange* returned under protest are 10 per cent.

Connecticut.

The damages on bills of exchange negotiated in Connecticut, payable in other States, and returned under protest, are as follows:—

1. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York (interior), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia, 3 per cent.

2. New York city, 2 per cent.

3. North Carolina, South Carolina, Georgia, and Ohio, 5 per cent.

4. All the other States and Territories, 8 per cent.

Foreign Bills. There is no statute in force in Connecticut in reference to damages on foreign bills of exchange.

New York.

The damages on bills of exchange negotiated in this State and payable in other States, and returned under protest for non-acceptance or non-payment, are as follows:—

1. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia, and Ohio, 3 per cent.

2. North Carolina, South Carolina, Kentucky, and Tennessee, 5 per cent.

3. Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Louisiana, Mississippi, Missouri, Michigan, Texas, Wisconsin, 10 per cent.

Foreign Bills. The damages on foreign bills, returned under protest, are 10 per cent.

New Jersey.

There is no statute in force in reference to damages on protested bills of exchange, either foreign or domestic.

Pennsylvania.

The damages on bills of exchange negotiated in this State, payable in other States, and returned under protest, are as follows:—

1. Upper and Lower California, New Mexico, and Oregon, 10 per cent.

2. All other States, 5 per cent.

Foreign Bills. The damages on foreign bills returned under protest are as follows (May 13, 1850):—

1. Payable in China, India, or other parts of Asia, Africa, or islands in the Pacific Ocean, 20 per cent.
2. Mexico, Spanish Main, West Indies, or other Atlantic islands, east coast of South America, Great Britain, or other parts of Europe, 10 per cent.
3. West coast of South America, 15 per cent.
4. All other parts of the world, 10 per cent.

Delaware.

There is no statute in force in reference to damages on domestic bills.

The damages upon bills of exchange drawn upon any person in England or other parts of Europe, or beyond the seas, and returned under protest, are 20 per cent.

Maryland.

The damages on bills of exchange negotiated in Maryland, payable in other States, and returned under protest, are uniformly 8 per cent.

The claimant is entitled to receive a sum sufficient to buy another bill of the same tenor, and eight per cent. damages on the value of the principal sum mentioned in the bill, and interest from the time of protest, and costs.

Practice includes the District of Columbia in this law of damages (Act of Assembly, 1785, c. 38), but it is questionable whether the District be within the law, which provides only for *States*.

Foreign Bills. The damages on these, returned under protest, are 15 per cent.

The claimant is to receive a sum sufficient to buy another bill of same tenor, and fifteen per cent. damages on the value of the principal sum mentioned in the bill, and interest from the time of protest, and costs.

Virginia.

Damages on bills of exchange negotiated in Virginia, payable in other States, and returned under protest, are uniformly 3 per cent.

The damages on *foreign bills* of exchange returned under protest are uniformly 10 per cent.

North Carolina.

The damages on bills of exchange negotiated in this State, payable in other States, and returned under protest, are uniformly 3 per cent.

The damages on *foreign bills* of exchange returned under protest are as follows: —

1. Bills payable in any part of North America, except the Northwest Coast and the West Indies, 10 per cent.
2. Bills payable in Madeira, the Canaries, the Azores, Cape de Verd Islands, Europe, and South America, 15 per cent.
3. Bills payable elsewhere, 20 per cent.

South Carolina.

The damages on bills of exchange negotiated in South Carolina, payable in other States, and protested for non-payment, are uniformly 10 per cent., together with costs of protest.

A bill drawn in South Carolina, payable in another State, is deemed a foreign bill, and damages may be claimed, although such bill be not actually returned after protest.

Foreign Bills. The damages on foreign bills of exchange negotiated in South Carolina are : —

1. On bills on any part of North America other than the United States, and on the West Indies, 12½ per cent.
2. On bills drawn on any other part of the world, 15 per cent.

Georgia.

The damages on bills of exchange negotiated in Georgia, payable in other States, and returned under protest, are uniformly 5 per cent.

The damages on *foreign* bills of exchange returned under protest are 10 per cent.

Alabama.

The damages on bills of exchange negotiated in Alabama, payable in other States, and returned under protest, are uniformly 15 per cent.

Bills payable within the State of Alabama, 5 per cent.

The damages on *foreign* bills of exchange returned under protest are 20 per cent.

Arkansas.

The damages on bills of exchange drawn or negotiated in Arkansas, expressed to be for value received, and protested for *non-acceptance*, or for *non-payment* after non-acceptance, are as follows (R. S. 1848, c. 25) : —

1. If payable within the State, 2 per cent.
2. If payable in Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, or Missouri, or at any point on the Ohio River, 4 per cent.
3. If payable in any other State or Territory, 5 per cent.
4. If payable within either of the United States, and protested for non payment, *after acceptance*, 6 per cent.
5. The damages on bills of exchange, expressed *for value received*, and payable beyond the limits of the United States, 10 per cent.

Florida.

The damages on bills of exchange negotiated in Florida, payable in other States, and returned under protest for non-payment, are uniformly 5 per cent.

Damages on *foreign* bills of exchange, 5 per cent.

Illinois.

The damages on bills of exchange negotiated in Illinois, payable in

other States or Territories, and returned under protest for non-payment, are uniformly (by Act of March, 1845) 5 per cent.

Damages on *foreign bills*, 10 per cent.

Indiana.

The damages on bills of exchange negotiated in Indiana, payable in other States, and returned under protest for non-payment, are uniformly 5 per cent.

The damages on *foreign bills* are 10 per cent.

Iowa.

The damages on bills of exchange negotiated in Iowa, payable in other States, and protested for non-payment, are uniformly 5 per cent.

No statute exists as to damages on *foreign bills* of exchange.

Kentucky.

There is no statute in force upon the subject of damages on either domestic or foreign bills of exchange.

Louisiana.

The damages on bills of exchange negotiated in Louisiana, payable in other States, are uniformly 5 per cent.

The damages on foreign bills of exchange, returned under protest, are uniformly (Statute of 1838) 10 per cent.

Michigan.

The damages on bills of exchange negotiated in Michigan, payable in other States, and returned under protest, are uniformly 3 per cent.

And the damages on *foreign bills* are also 3 per cent.

Mississippi.

The damages on bills of exchange negotiated in Mississippi, payable in other States, and returned under protest, are uniformly 5 per cent.

The damages on *foreign bills* are 10 per cent.

Missouri.

The damages on bills of exchange negotiated in Missouri, payable in other States, and returned under protest, are uniformly 10 per cent.

On bills payable within the State, 4 per cent.

On *foreign bills*, 20 per cent.

Ohio.

The damages on bills of exchange negotiated in Ohio, payable in other States, and returned under protest, are uniformly (by Act of February 15, 1831) 6 per cent.

On *foreign bills*, 12 per cent.

Tennessee.

The damages on bills of exchange negotiated in Tennessee, payable in other States, and protested for non-payment, are 3 per cent.

The damages on *foreign* bills, protested, are :—

1. If drawn upon any person out of the United States, and in North America, bordering upon the Gulf of Mexico, or in any part of the West India Islands, 15 per cent.

2. If payable in any other part of the world, 20 per cent.

Texas.

There is no statute in force in reference to damages on either domestic or foreign bills of exchange.

Wisconsin.

The damages on bills of exchange drawn or indorsed in Wisconsin, payable in either of the States adjoining that State, and protested for non-acceptance or non-payment, are 5 per cent.

If drawn upon a person or body politic or corporate, within either of the United States, and not adjoining to that State, the damages are 10 per cent.

The damages on bills of exchange drawn or indorsed in Wisconsin, payable beyond the limits of the United States, and protested for *non-acceptance* or *non-payment*, are (R. S. 1849, p. 263) 5 per cent, together with the current rate of exchange at the time of demand.

California.

By an act passed April 16, 1850, the damages on protested bills of exchange drawn or negotiated in California were fixed as follows :—

1. If drawn upon any person or persons east of the Rocky Mountains, and within the limits of the United States, 15 per cent.

2. If drawn upon any person or persons in Europe, or in any foreign country, 20 per cent.

By an act passed March 13, 1850, the rate of interest on money loaned in California was fixed at ten per cent. per annum, where there is no special contract ; but “ parties may agree in writing for the payment of any rate of interest whatever on money due, or to become due, on any contract. Any judgment rendered on such contract shall conform thereto, and shall bear the interest agreed upon by the parties.”

CHAPTER X.

CHECKS ON BANKS AND BANKERS.

A CHECK is a written order or request addressed to a bank or a private banker, by a person having money in their hands, requesting to pay to another person, on presentment, or to him or bearer, or to him or order, a certain sum of money specified in the instrument.

For instance :—

Boston, 20th November, 1852.

\$ 200.00.

To the Cashier of the New England Bank.

1. Pay to John White or bearer,
2. Or, Pay to Bearer,
3. Or, Pay to John White or order,
4. Or, Pay to John White, two hundred dollars.

(Signed),

HENRY BROWN.

In cases No. 1 and 2, the instrument may be transferred to any third person without any indorsement, and the holder of it may demand payment. In case No. 3, where it is payable to the order of a person, it must be indorsed by the payee in order to transfer it, and in the fourth case, where it is made payable to a particular person only, it is not negotiable. With large sums it is advisable to make checks payable to order, because, in case the check should be lost, it would not be paid without the indorsement of the payee, and the finder could not succeed in getting payment without forging the name. Moreover, the drawer of the check will then have the name of the payee on the back of the check as proof of his having received the money, as it is the custom of banks to require the indorsement of the person's name upon receiving the money, if the check is made payable to order.

Checks have often been compared to bills of exchange, and Mr. Justice Cowen, in *Harker v. Anderson*, 21 Wend. R. 372, went so far as to say, that they were to all intents and purposes bills of exchange payable on demand. But this has been doubted and denied both by Chancellor Kent and Mr. Justice Story. (See Story on Promissory Notes, § 489 and note 5.) Mr. Justice Story there says:—"The circumstances in which they principally differ from bills of exchange are,—1. They are always drawn on a bank, or on bankers, and are payable immediately on presentment, *without any days of grace*. 2. They require no acceptance as distinct from prompt payment. 3. They are always supposed to be drawn upon a previous deposit of funds, and are an absolute appropriation of so much money in the hands of the bank or bankers to the holder of the check, to remain there until called for, and cannot, therefore, be afterwards withdrawn by the drawer."

Although checks, generally speaking, do not say in express terms that they are payable *on demand*, yet they are still payable on demand in contemplation of law. Checks are frequently ante-dated, or post-dated,

but still they are payable on presentment, at any time after the date. For instance, if I draw a check on the 1st of January, but date it the 14th of January, it is payable on presentment on the 14th of January, or any day after it. This is frequently done when the drawer has no funds or not sufficient funds at the bank on the day he draws the check, but expects to have some against the day whose date it bears.

When the check is made payable on a specified day, for instance, if it is dated the 1st of January, 1852, and made payable on the 10th of January, 1852, the general understanding among banks is, that such a check is payable on the day specified, as, in the above case, on the 10th of January; *without days of grace*. It was so held by Justice Story in the matter of Brown, 2 Story's R. 502, where the checks were drawn on the Granite Bank of Boston, dated on a particular day, and were payable on another specified day. In the case of Brown v. Lusk, 4 Yerger's R. 210, it was held, that a check drawn in Nashville, on the Branch Bank of the United States at Nashville, on the 13th of December, 1827, payable to A. B. or bearer, on the 14th of January following, was an inland bill of exchange, and entitled to grace. But Judge Story does not approve of this decision in the above-cited case of Brown. And Chancellor Kent, in his Commentaries (4 Kent's Comm. p. 549, note, 4th edit.) says: — "A check differs from a bill of exchange in this, that it has no days of grace, and requires no acceptance distinct from prompt payment. The drawer of a check is not a surety, but the principal debtor, as much as the maker of a promissory note. The check is the acknowledgment of a certain sum due. It is an absolute appropriation of so much money in the hands of his banker to the holder of the check, and there it ought to remain until called for, and unless the drawer actually suffers by delay, as by the intermediate failure of his banker, he has no reason to complain of delay not unreasonably protracted. If the holder does so unreasonably delay, he assumes the risk of the drawee's failure, and he may, under circumstances, be deemed to have made the check his own, to the discharge of the drawer. But this is quite distinct from the strict rule of diligence applicable to a surety, in which light stood the indorser who has a right to require diligence on the part of the holder, to relieve him from responsibility. It is true, however, that there is so much analogy between checks and bills of exchange and negotiable notes, that they are frequently spoken of without discrimination."

But in the case of Bowen and others against Newell, decided in the Court of Appeals of New York on the 12th of April, 1853, and cited before, it was held that such a check is like a bill of exchange, and entitled to grace.

We have seen before, that a bill of exchange or a promissory note, taken after the day of payment, or when it is overdue, subjects the holder to all the equities attaching to it in the hands of the party from whom he receives it. But this rule does not apply to a check; for a check is not treated as overdue, merely because it has not been presented as early as it might be, and the holder has taken it some days after its date, unless he has notice of such equities at the time he takes it. Hence, a *bonâ fide* holder, purchasing a check several days after its date, for a

valuable consideration, is entitled to claim payment from the banker, and can hold the drawer responsible in case it is not paid, notwithstanding it has been obtained by fraud from the drawer. And if the drawer, or indorser, or transferrer of a check, has issued or passed it long after its date, he will be held liable to a subsequent *bonâ fide* holder thereof for a valuable consideration, without notice, notwithstanding the consideration upon which he has so issued or passed it has, as between himself and the person to whom he originally delivered it, entirely failed. (Story on Promissory Notes, § 491.) The drawer of a check is treated almost like the principal debtor, and is not discharged by any neglect or laches of the holder, in not making due presentment thereof, or in not giving him notice of the dishonor, unless he has suffered some loss or injury thereby, and then only in so far as he has suffered injury; as, for instance, if the bank should have failed in the mean time.

The Rights and Duties of the Holder of a Check.

The general rule is, that the holder of a check, if he will not lose his claims upon the drawer in case the check should be dishonored, is bound to present the same for payment within a reasonable time, and to give notice of the dishonor to the drawer within a reasonable time; otherwise the delay is at his peril. What is a reasonable time will depend upon circumstances, and will, in many cases, depend upon the time and the place of receiving the check, and upon the relations of the parties between whom the question arises.

If the payee or holder receives it in the same town or city where it is payable, he is bound to present it for payment, at farthest, on the next secular day after it is received, before the close of the usual banking hours. When he receives it at a place distant from the place of payment, it will be sufficient for him to forward it by post to the latter place on the next secular day after it is received; and the person to whom it is thus sent will not be bound to present it for payment until the day after it has reached him. If payment is not thus regularly demanded, and the bank or bankers should fail before the check is presented, the loss will be the loss of the holder, who will have made the check his own by his delay. (Story on Promissory Notes, § 493.)

If the check should have been passed to several holders, the drawer will not be bound beyond the time for which he would be bound to the first holder, namely, the next day after its issue. If, therefore, in the intermediate time, the bank or bankers should fail, and would have paid the check if it had been presented in due season, the loss must be borne by the holder, and not by the drawer.

Where a check is negotiable, and passes by indorsement or mere delivery, the same rule applies between the parties to the transfer, that applies between the drawer and the original payee of the check. (*Mohawk Bank v. Broderick*, 10 Wend. R. 304, and 13 Wend. 133.)

The drawer and every holder is liable to every subsequent holder only upon due presentment and dishonor of the check, within the time for which he would be liable if the check had been presented by the party

immediately claiming from or under him. (Story on Promissory Notes, § 496.) That is to say, the original drawer is answerable to his payee, and this one is liable to the person to whom he delivers it, and so on, if the time of presentment is observed as above stated. If, therefore, the check is dated the 1st of January, and delivered by A on that day to B, and B delivers it on the 2d of January to C, and C delivers it on the 3d of January to D, who presents it for payment on the 4th of January, all parties living at the place of payment, and the check be dishonored, the bank having failed on the 3d of January; A, the original drawer, would not be liable to make good that check to D, nor to B or C, provided he had suffered the loss of the whole amount of money for which the check was drawn in consequence of this delay. But C would be answerable to D, because D presented the check within a reasonable time as to C; but B would not be answerable to C, because C ought to have presented the check on the 3d at farthest.

But it must be borne in mind, that this rule applies only where, in the intermediate time between the drawing of the check and the presentment thereof for payment, there has been a change of circumstances materially affecting the rights and interests of the drawer in respect to the bank or bankers on whom the check is drawn; for instance, if the bank has failed after the time allowed for presentment, and the drawer has lost all his funds deposited with the bank.

But the drawer is in no case discharged from paying the check drawn where his interests have not been impaired at all by the delay; if, for instance, the bank still remains in good credit and is able to pay the check, but the drawer has in the mean time withdrawn his funds, or if the drawer had no funds at the bank at the time the check was drawn. In these cases the drawer would be liable, although months had elapsed between the date of the check and its presentment for payment. The same rule applies to an indorser or transferrer of a check, in respect to subsequent holders. But if the drawer can show that, by the omission to make due presentment and give due notice of dishonor, he has sustained loss or injury, he will be exonerated in proportion to such loss.

We will add a few decisions which have been made in regard to checks, which may bring out points not apparent in the general rules laid down above.

A check made in New York, payable out of the State, in current bank-notes, is not negotiable. (*Little v. Phoenix Bank*, 2 Hill, 425, and 7 Hill, 359.)

The drawing of a check upon a bank is not a specific appropriation of the funds of the drawer to its payment, in preference to other checks subsequently drawn; that is to say, if A draws a check in favor of B, and afterwards draws several other checks in favor of different persons, who present their checks before B does his, and all the funds are thus drawn out, and the drawer fails, B, the first drawee, cannot claim on the ground of priority an appropriation of the funds in the bank at the time his check was drawn. (*Dykens v. The Leather Manufacturers' Bank*, 11 Paige, 612.)

The drawer of a check may countermand its payment at any time before its payment or acceptance by the bank. (*Ibid.*)

A post-dated check is payable on the day of its date, but if that day be Sunday, it is payable on Monday. (*Salter v. Burt*, 20 Wend. 205.)

Notice of the presentment and refusal to pay is necessary to charge the drawer. (*Harker v. Anderson*, 21 Wend. 372.)

The indorser of a check was held to be discharged when the holder delayed presentment for twenty-three days, the bank being about sixteen miles from him. (*Mohawk Bank v. Broderick*, 13 Wend. 133.)

So, where presentment was delayed for six days, the holder living in the place where the bank was. (*Gough v. Staats*, 13 Wend. 549.)

Where seven or eight days elapsed after the plaintiff received the check before presentment, the course of mail to the bank being only three days, it was held that, if he had not put it in circulation, the payee would have been discharged; but as he parted with it to another on the day he received it, and there was no proof of negligence in any subsequent holder, he recovered, the burden of proof in such case being upon the payee. (*Smith v. Janes*, 20 Wend. 192.)

CHAPTER XI.

FORMS OF PROTEST.

No. 1.—*Protest of a Bill on Non-acceptance.*

On the ——— day of ——— one thousand eight hundred and ——— I, R. B., Notary Public, duly admitted and sworn, dwelling in L., in the county of L., and State of ———, one of the United States of North America, at the request of C. D. of L., [or of "the holder," or "the bearer," as the case may be,] did exhibit the original bill of exchange, whereof a true copy is on the other side written, [or did cause due and customary presentment to be made of the original bill of exchange, whereof a true copy is on the other side (or above) written,] unto a clerk in the counting-house of E. F., the person upon whom the same is drawn, and demanded acceptance thereof, [or acceptance being thereupon demanded,] and he answered that it would not be accepted at present.

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of acceptance of the said bill.

(Seal.)

Which I attest,

R. B.

Notary Public, L.

No. 2. — Protest of a Bill on Non-acceptance, when the Drawee has neglected to leave Orders with his Clerks.

On the ——— day of ———, [commence as in No. 1,] unto a clerk in the counting-house of E. F., the person upon whom the same is drawn, and demanded acceptance thereof, [or acceptance being thereupon demanded,] and he answered, that the said E. F. was not within, and had left no orders for the acceptance of the said bill.

Wherefore, I the said notary, [conclude as in No. 1.]

(Seal.)

Which I attest,

R. B.

Notary Public, L.

No. 3. — Protest of a Bill on Non-acceptance, when the Drawee's Place of Business is shut up [and he is become bankrupt or insolvent].

On the ——— day of ——— [commence as in No. 1] did take [or exhibit] the original bill of exchange [whereof a true copy is on the other side written] unto [or at] the counting-house of E. F., the person upon whom the said bill is drawn, in order to present the same, and to demand acceptance of it, and the door was found fastened, and there was no person there to give an answer, and I am informed that the said E. F. has been declared bankrupt [or has suspended payment, as the case may be].

Wherefore, I, the said notary, [conclude as in No. 1.]

(Seal.)

Which I attest,

R. B.

Notary Public, L.

No. 4. — Protest of a Bill on Non-acceptance, when the Drawee cannot be found, or when there is no such Person.

On the ——— day of ——— [commence as in No. 1] did make and cause to be made due and careful inquiries, at the ——— post-office, and in other proper quarters, for E. F., the person upon whom the said bill purports to be drawn, in order to have demanded acceptance thereof, but was unable to discover him, or to learn any tidings of him or of his residence.

Wherefore, I, the said notary, [conclude as in No. 1.]

(Seal.)

Which I attest,

R. B.

Notary Public, L.

No. 5. — Protest of a Bill on Non-acceptance, when a Copy or a Memorandum of the Principal Contents of it has been exhibited in the Absence of the Original, and Acceptance has been demanded.

On the ——— day of ——— [commence as in No. 1] did apply for the original bill of exchange, whereof on the other side a copy or the principal contents is or are written, unto a clerk in the counting-house of Mr. D. K., the person upon whom the same is drawn, and demanded acceptance of the said original bill, and I also demanded the delivery of

the said original bill, but he did not deliver up the same, and stated that Mr. K. had left the counting-house, and had [as he believed inadvertently] taken the said bill away with him, and that the same was not accepted.

Wherefore, I, the said notary, [conclude as in No. 1.]

(Seal.)

Which I attest,

R. B.

Notary Public, L.

No. 6. — Protest of a Bill on Non-payment.

On the ——— day of ———, [commence as in No. 1,] unto E. F. [or, as the case may be, unto a clerk in the counting-house of E. F.], the person upon whom the said bill is drawn, [and by whom the same is accepted, if the bill have been accepted,] and demanded payment thereof, [or payment being thereupon demanded,] and he answered, that it would not be paid.

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of payment of the said bill.

(Seal.)

Which I attest,

R. B.

Notary Public, L.

No. 7. — Protest of a Bill on Non-payment, when the House or Place where it is made Payable by the Acceptance is shut up, and no one is there to give an Answer.

On the ——— day of ———, [commence as in No. 1; the protest ought to state the attempt to make the presentment for payment, by the bill's being taken to the place at which by the acceptance it is made payable,] did take [or exhibit] the original bill of exchange, whereof a true copy is above or on the other side written, unto [or at] the counting-house [or banking-house, as the case may be] of Messrs. E. F. and Company, where the said bill is made payable by the acceptance, in order to present the same and demand payment thereof, and the door was found fastened, and the place shut up, and there was no person there to give an answer [and I am informed that the said E. F. and Company have been declared bankrupt, or have suspended payment, as the case may be].

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for all exchange, re-exchange, and all costs, damages, and interest, present and to come, for want of payment of the said bill.

(Seal.)

Which I attest

R. B.

Notary Public, L.

No. 8. — *Protest of a Bill for better Security.*

On the ——— day of ———, one thousand eight hundred and ———, I, R. B., Notary Public, duly admitted and sworn, dwelling in L., in the county of L., and State of ———, one of the United States of North America, at the request of C. D. of L. aforesaid, [or of the holder or the bearer,] did exhibit the original bill of exchange [whereof a true copy is above or on the other side written] at the counting-house of E. F., the person upon whom the said bill is drawn, and whose acceptance appears thereon, and did present the same unto a clerk there, and demand security for the payment thereof, when the same should become payable, in consequence of the said E. F. having become bankrupt, [or insolvent, or suspended payment,] and I received for answer, that security for the same could not be given by the said E. F., who has been declared bankrupt [or has suspended payment, as the case may be].

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the drawer of the said bill, and the acceptor and all the other parties thereto, and all others concerned, for all exchange, reëxchange, and all costs, damages, and interest, present and to come, for want of better security for the payment of the said bill, when due.

(Seal.)

Which I attest,

R. B.

Notary Public, L.

No. 9. — *Protest of a Bill on Non-payment, when the Original has been lost before Maturity, and a Copy or the Second of Exchange of the same Set is presented for Payment.*

On the ——— day of ———, one thousand eight hundred and ———, I, R. B., Notary Public, duly admitted and sworn, dwelling in L., in the county of L., and State of ———, one of the United States of North America, at the request of C. D. of L. aforesaid, did exhibit a copy of the original bill of exchange [or did exhibit the second of exchange], (whereof a copy is above or on the other side written,) unto E. F., the person upon whom the same is drawn, and by whom the said original bill [or the first of exchange of the same set] has been accepted, and which has been lost or mislaid, as I am informed, and the same being this day due, I demanded payment thereof, and the said E. F. answered, that he would not pay the same.

Wherefore, I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the drawer of the said bill, and the acceptor, and all other parties thereto, and all others concerned, for all exchange, reëxchange, and all costs, damages, and interest, present and to come, for want of payment of the said bill, of which the original being lost, the said copy [or second of exchange] was exhibited in lieu of it, and payment demanded.

(Seal.)

Which I attest,

R. B.

Notary Public, L.

No. 10. — *Protest of a Bill of Exchange for Want of Acceptance upon a Letter.*

On the ——— day of ———, etc., Mr. A. B. of the city of London, produced unto me, I. M. of the said city, Notary Public, etc., a bill of exchange, whereof a true copy is on the side written, together with a letter signed C. D. for Messrs. E. and F., and dated at ———, the ——— day of ———, one thousand eight hundred and ———, directed to the said Messrs. E. and F., and which he received by the post, wherein he says as follows: "Sir, yours of the ——— day of ——— instant, to Messrs. E. and F., is before me, covering Mr. G. L.'s bill of exchange, on them for \$——; as said gentleman is from home, I have no orders to accept the said bill," [or as the case may be,] — which letter and answer not being satisfactory, I, the said notary, at the request of the said Mr. A. B. have protested, etc.

No. 11. — *Protest of a Bill, by a Person resident in a Place where there is no Notary.*

On the ——— day of ———, one thousand eight hundred and ———, I, A. B., a substantial person, residing at N., in the county of ———, at the request of the holder of a certain bill of exchange, whereof a true copy is on the other side written, did exhibit the said original bill of exchange unto Mr. ——— of N. aforesaid, the person upon whom the same is drawn, and demanded acceptance thereof, who answered that [here state his answer and refusal]. And I, the said A. B., do hereby certify, that there is no public notary practising in or near N. aforesaid. Wherefore, I, the said A. B., at the request aforesaid, and in the absence of and in default of a public notary at this place, have protested, and by these presents do protest against the drawer of the said bill, and all other parties thereto, and all others concerned, for all exchange, reëchange, and all costs, damages, and interest, present and to come, for want of acceptance thereof, in the presence of C. D. and E. F., both credible persons residing at N. aforesaid.

Which I attest,

A. B.

a house-keeper and a merchant [or a manufacturer, or an attorney-at-law, or banker, or hotel-keeper, etc., etc.] residing at N. aforesaid.

No. 12. — *Act of Honor on Acceptance supra Protest by a third Person, for the Honor of the Drawer [or Indorser].*

On the ——— day of ———, one thousand eight hundred and ———, I, R. B., Notary Public, duly admitted and sworn, dwelling in ———, in the county of ———, and State of ———, one of the United States of North America, do hereby certify, that the original bill of exchange, for five hundred pounds, of which a copy is above or on the other side written, (now protested for non-acceptance,) was this day exhibited [or exhibited by me] unto E. F., one of the firm of E. F. and Company, who de-

clared that the said firm would accept the said bill supra protest, for the honor of the drawer [or, of G. H., the indorser] ; holding the drawer [or, the said indorser and the drawer] and all other persons, responsible to the said firm for the said sum, and for all interest, damages, and expenses incident thereto ; I have, therefore, granted this notarial act of honor accordingly.

(Seal.)

Which I attest,
R. B.,
Notary Public.

No. 13. — Act of Honor on Acceptance supra Protest, by the Drawee, for Part of the Amount, for the Honor of the Drawer.

On the —— day of ——, one thousand eight hundred and ——, I, R. B., Notary Public, duly admitted and sworn, dwelling in ——, in the county of ——, and State of ——, one of the United States of North America, do hereby certify, that the original bill of exchange for five hundred dollars, of which a copy is above [or on the other side] written, (now protested for non-acceptance,) was this day exhibited unto C. D., one of the firm of C. D. and Company, upon whom the same is drawn, who declared [or declared before me] that the said firm would accept the said bill supra protest for the honor of E. F. the drawer, for part thereof, namely, for the sum of three hundred dollars ; holding the drawer and all other proper persons responsible to them, the said C. D. and Company, for the last-mentioned sum, and for all interest, damages, and expenses ; I have, therefore, granted this notarial act of honor accordingly.

(Seal.)

Which I attest,
R. B.,
Notary Public.

No. 14. — Act of Honor on Acceptance supra Protest, by a Firm of Third Persons, through the Medium of an Agent, for the Honor of the Drawers.

On the —— day of ——, one thousand eight hundred and ——, I, R. B., Notary Public, duly admitted and sworn, dwelling in ——, in the county of ——, and State of ——, one of the United States of North America, do hereby certify, that the original bill of exchange for five hundred dollars, of which a copy is above [or on the other side] written, (now protested for non-acceptance,) was this day exhibited [or exhibited by me] at the counting-house of the firm of C. D. and Company, who have declared [or, who have declared through their agent on their behalf] that the said firm would accept the said bill supra protest for the honor of E. F. and Company, the drawers, for part thereof, namely, for the sum of three hundred dollars ; holding the drawers, and all other proper persons, responsible to them, the said C. D. and Company, for the last-mentioned sum, and for all interest, damages, and expenses ; I have, therefore, granted this notarial act of honor accordingly.

(Seal.)

Which I attest,
R. B.,
Notary Public.

No. 15. — *Act of Honor, on Acceptance supra Protest by the Drawees, for Part of the Amount for the Honor of the Drawer, and for the Residue for the Honor of an Indorser.*

On the ——— day of ———, one thousand eight hundred and ———, I, R. B., Notary Public, duly admitted and sworn, residing in ———, in the county of ———, State of ———, one of the United States of North America, do hereby certify, that the original bill of exchange for five hundred dollars, of which a copy is above [or on the other side] written, (now protested for non-acceptance,) was this day exhibited unto C. D., one of the firm of C. D. and Company, upon whom the same is drawn, who declared [or declared before me] that the said firm would accept the said bill supra protest, for the honor of E. F., the drawer, for part thereof, namely, for the sum of three hundred dollars; and also that the said firm would further accept the said bill supra protest, for the honor of G. H., the first indorser thereof, for the sum of two hundred dollars, the residue of the amount thereof; holding the said drawer, and all other proper persons, responsible to the said C. D. and Company, for the said sum of three hundred dollars, and also for all interest, damages, and expenses; and also holding the said first indorser, and the said drawer, and all other proper persons, responsible to the said C. D. and Company, for the said sum of two hundred dollars, and for all interest, damages, and expenses; I have, therefore, granted this notarial act of honor accordingly.

(Seal.)

Which I attest,
R. B.,
Notary Public.

No. 16. — *Act of Honor, on Acceptance supra Protest by a Person merely as an Agent on Behalf of a Firm, for a Part of the Amount, and by the same Person in his individual Capacity for the Balance.*

On the ——— day of ———, one thousand eight hundred and ———, I, R. B., Notary Public, duly admitted and sworn, residing and practising in ———, in the county of ———, State of ———, and one of the United States of North America, do hereby certify, that the original bill of exchange for one thousand two hundred dollars, of which a copy is on the other side written, (now protested for non-acceptance,) was this day exhibited to Mr. R. W., the agent of the firm of G. G. and S., who declared that he would, as such agent, for and on behalf of the said firm, accept the said bill supra protest for eight hundred dollars, part of the amount of the said bill, for the honor of W. M. L., the drawer, and that he would accept the same supra protest individually for four hundred dollars, the balance of the said bill, for the honor of the drawer; holding the drawer, and all other proper persons, responsible to the said firm, and to him the said R. W. individually, in the aforesaid proportions, for the said sum, and for all interest, damages, and expenses; I have, therefore, granted this notarial act of honor accordingly.

(Seal.)

Which I attest,
R. B.,
Notary Public.

No. 17. — Act of Honor on Payment *supra* Protest, by a Firm of Third Persons, for the Honor of the Drawers and Indorsers.

On the _____ day of _____, one thousand eight hundred and _____, I, R. B., Notary Public, duly admitted and sworn, dwelling in _____, in the county of _____, State of _____, one of the United States of North America, do hereby certify, that the original bill of exchange for five hundred dollars, of which a copy is above [or on the other side] written, (now protested for non-payment,) was this day exhibited unto C. D. of Liverpool, one of the firm of C. D. and Company, who declared [or declared before me] that the said firm would pay the amount of the said bill *supra* protest, for the honor of E. F. and Company, the drawers, and of G. H. and Company, the indorsers; holding the drawers and the said indorsers, and all other proper persons, responsible to them, the said C. D. and Company, for the said sum, and for all interest, damages, and expenses. I have, therefore, granted this notarial act of honor accordingly.

(Seal.)

Which I attest,
R. B.,
Notary Public.

No. 18. — Act of Honor on Payment *supra* Protest of Part of the Amount, by the Drawee through the Medium of an Agent, for the Honor of the Drawer.

On the _____ day of _____, one thousand eight hundred and _____, I, R. B., Notary Public, duly admitted and sworn, dwelling in _____, in the county of _____, State of _____, one of the United States of North America, do hereby certify, that the original bill of exchange for five hundred dollars, of which a copy is above [or on the other side] written, (now protested for non-payment,) was this day exhibited [or exhibited by me] at the counting-house of the firm of C. D. and Company, upon whom the same is drawn, who have declared [or, who have declared through their agent or clerk on their behalf] that the said firm would pay the sum of three hundred dollars, part of the amount of the said bill *supra* protest, for the honor of E. F., the drawer; holding the drawer and all other proper persons responsible to the said firm of C. D. and Company, for the last-mentioned sum, and for all interest, damages, and expenses; I have, therefore, granted this notarial act of honor accordingly.

(Seal.)

Which I attest,
R. B.,
Notary Public.

No. 19. — Act of Honor on Payment *supra* Protest, by a Firm of Third Persons, of the Balance of a Bill (after Payment of a Part by the Drawee) for the Honor of the Drawer.

On the _____ day of _____, one thousand eight hundred and _____, I, R. B., Notary Public, duly admitted and sworn, dwelling in _____, in the county of _____, State of _____, one of the United States of North

America, do hereby certify, that the original bill of exchange for five hundred dollars, of which a copy is above [or on the other side] written, now protested for non-payment, (the sum of three hundred dollars, part of the said bill, appearing to have been paid, by the drawee supra protest, for the honor of the drawer,) was this day exhibited [or exhibited by me] at the counting-house of the firm of C. D. and Company, and C. D., one of the said firm, declared that the said firm would pay the sum of two hundred dollars, the balance of the said bill supra protest, for the honor of E. F., the drawer thereof; holding the drawer, and all other proper persons, responsible to the said firm of C. D. and Company for the last-mentioned sum, and for all interest, damages, and expenses; I have, therefore, granted this notarial act of honor accordingly.

(Seal.)

Which I attest,

R. B.,

Notary Public.

* * The above forms are taken from R. Brooke's *Treatise on the Office of a Notary of England*.

Form of Protest used in the State of New York.

United States of America, State of New York, ss.

Be it known, that on the _____ day of _____, in the year of our Lord one thousand eight hundred and fifty _____, at the request of _____ of Buffalo, I, _____, a Notary Public, duly admitted and sworn, dwelling in the city of Buffalo, County of Erie, and State aforesaid, presented the annexed _____ of _____ for _____ dollars, _____ at the _____ and demanded payment thereof, which was refused. Whereupon, I, the said Notary, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker and indorser of the said _____ as against all others whom it doth or may concern, for exchange, reëxchange, and all costs, charges, damages, and interests already incurred and to be incurred by reason of the non-payment of the said _____. And I, the said Notary, do hereby certify, that on the same day and year above written, I deposited in the post-office, in said city of Buffalo, notice of the foregoing protest, partly written and partly printed, signed by me and folded in the form of letters, as follows, viz.:—

Notice for _____ Directed _____

Do. " _____ do. _____

Each of the above-named places being the reputed place of residence of the persons to whom the said notice was directed respectively; and the nearest post-office thereto; and I further certify, that on the day and year last aforesaid, I served notice of the foregoing protest signed by me, partly written and partly printed, as follows, to wit:—

Notice for _____

Do. " _____

In witness whereof, I have hereunto subscribed my name and affixed my seal of office in presence of John Doe and Richard Roe, witnesses.

In Testimonium Veritatis.

_____, *Notary Public*

CHAPTER XII.

STATUTE LAWS REGARDING BILLS OF EXCHANGE, PROMISSORY NOTES AND NOTARIES PUBLIC.

MASSACHUSETTS.

Bills and Notes.

THE damages provided by statute, to be recovered on bills protested, have been stated in Chapter IX.

Revised Statutes, ch. 33. *Days of Grace to be allowed.*

§ 5. In all bills of exchange, payable at sight or at a future day certain, within this State, and on all promissory negotiable notes, orders, and drafts, payable at a future day certain, within this State, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed, by the custom of merchants, on foreign bills of exchange payable at the expiration of a certain period after date or sight.

§ 6. (*Not when payable on Demand.*)—The provisions of the preceding section shall not extend to any bill of exchange, note, or draft payable on demand.

Supplement to Rev. Stat., 1839, ch. 121: *An Act concerning Notes payable on Demand.*

§ 1. In any action brought upon a promissory note payable on demand, made after this act shall go into operation, by an indorser against the promisor, any matter shall be deemed a legal defence, and may be given in evidence accordingly, which would be a legal defence to a suit on the same note, if brought by the promisee.

§ 2. (*When Demand must be made, and Notice given, in Order to charge an Indorser.*)—On any promissory note payable on demand, made after this act shall go into operation, a demand made at the expiration of *sixty* days from the date thereof, without grace, or at any time within that term, shall be deemed to be made within a reasonable time; and any act, neglect, or other thing which by the rules of law or the custom of merchants is deemed equivalent to a presentment and demand, on a note payable at a fixed time, or which would dispense with such presentment and demand, if it shall occur at or within the said term of sixty days, shall be deemed to be a dishonor thereof, and shall authorize the holder of such note to give notice of the dishonor thereof to the indorser, as upon a presentment to the promisor, and his neglect or refusal to pay the same. And no presentment of such note to the promisor, and demand of payment thereof, shall be deemed to be made within a reasonable time, so as to charge the indorser thereof, unless made on or before the last day of said term of sixty days.

§ 3. (*Indorser liable after Notice.*)—Upon all promissory notes payable on demand, made after this act shall go into operation, the several

indorsers thereof shall be liable, upon due and reasonable notice, given according to the rules of law and the customs of merchants, of the dishonor of such notes, in the same manner and to the same effect as upon the dishonor of promissory notes payable at a fixed time, and not otherwise.

It has been held by the Supreme Court, that if a note on demand is indorsed after sixty days from its date, a demand on the maker is within a reasonable time, if made not later than at the expiration of sixty days from the time of the indorsement of the note. (*Rice v. Wesson*, 11 Met. 400.)

And further, to charge an indorser of a note payable on demand, the indorsee must give him notice of non-payment upon the first demand on the maker, although such demand was made at an earlier day than was necessary in order to render the indorser liable on his indorsement, and although the indorsee gives the indorser notice of non-payment upon a second demand on the maker, which would have been in season to charge the indorser if no previous demand had been made. (*Ibid.*)

Notaries Public.

According to the fourth article of Amendment of the Constitution, Notaries Public shall be appointed by the Governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the Governor, with the consent of the Council, upon the address of both houses of the Legislature.

Chapter 13 of the Revised Statutes provides:—

§ 47. On the death, resignation, or removal from office of any notary public, his records, together with all his official papers, shall be deposited in the office of the clerk of the Court of Common Pleas for the same county in which the said notary public resided.

§ 48. If any notary public, on his resignation or removal from office, shall, for the space of three months, neglect to deposit his records and official papers in the clerk's office, he shall forfeit a sum not exceeding five hundred dollars.

§ 49. If the executor or administrator of any deceased notary public shall, for the space of three months after his acceptance of such appointment, neglect to deposit in the clerk's office the records and official papers of such deceased notary, which shall come into his hands, he shall forfeit a sum not exceeding five hundred dollars.

§ 50. If any person shall knowingly destroy, deface, or conceal any records or official papers of any notary public, he shall forfeit a sum not exceeding one thousand dollars, and shall moreover be liable in damages to any party injured.

§ 51. The several clerks of the Court of Common Pleas shall receive and safely keep all the records and official papers of any notary public, which are, in this chapter, directed to be deposited in the offices of said clerks.

§ 52. Said clerks shall make and certify copies of any records and official papers of any notary public deposited with them; for which copies they shall be paid the same fees that such notary public would

have been entitled to ; and all copies, certified by the said clerks, shall have the same effect in law, as if they had been certified to by such notary public.

By chap. 59, § 13, the acknowledgment of deeds of real estate may be made before any justice of the peace in this State, or before any justice of the peace, magistrate, or *notary public* within the United States, or in any foreign country, or before any commissioner appointed for that purpose by the Governor of this Commonwealth, or before any minister or consul of the United States in any foreign country.

Supplement to the Revised Statutes of 1839, chap. 93, § 1. *Fees of Notaries in Massachusetts.*

The fees of notaries public for the services hereafter specified shall be as follows, to wit :— For every protest for the non-acceptance or non-payment of a bill of exchange, order, draft, or check, the amount whereof is five hundred dollars, or upwards, or for the non-payment of a promissory note for the like amount, *one dollar* ; for recording the same, *fifty cents* ; for every protest for the non-acceptance or non-payment of a bill of exchange, order, draft, or check, the amount whereof is less than five hundred dollars, or for the non-payment of a promissory note for the like amount, *fifty cents* ; for recording the same, *fifty cents* ; for *noting* the non-acceptance or non-payment of a bill of exchange, order, draft, or check, or the non-payment of a promissory note, *seventy-five cents* ; for each notice of non-acceptance or non-payment of any bill, order, draft, check, or note, given to any party liable for the payment thereof, *twenty-five cents* : *Provided*, that the whole cost of protest, including all necessary notices, and the record thereof, when the bill, order, draft, check, or note is of the amount of five hundred dollars or upwards, shall in no case exceed *two dollars* ; and when the amount is less than five hundred dollars, the whole cost shall not exceed *one dollar and fifty cents* ; and the whole cost of noting, including recording and all notices, shall in no case exceed *one dollar and twenty-five cents*.

MAINE.

Bills and Notes.

1847, Chap. 44, § 12. The protest of any foreign or inland bill of exchange or promissory note or order, duly certified by any notary public, under his hand and official seal, shall be legal evidence of the facts stated in such protest, as to the same, and also as to the notice given to the drawer or indorser, in any court of law.

§ 13. (*Of Days of Grace on Bills and Notes.*)— Whenever any promissory note, inland bill of exchange, draft, or order for the payment of money, payable at a future day, or at sight, and not on demand, shall become payable in this State, the maker of any such note, and the acceptor of any such bill of exchange, respectively, shall be entitled to a grace of three days, unless the third day happens to be the Lord's day, or a day of public fast or thanksgiving, appointed by the Governor and

Council, or the Fourth of July, in which excepted cases a grace of two days only shall be allowed.

§ 14. (*Proviso relating to the 4th of July.*) — If the fourth day of July should happen to be Monday, and the third day of grace on any such note, bill, or draft should happen on the same day; or if the fourth day of July should happen on Saturday, and the following Sunday should be the third day of grace, an additional day of grace shall be allowed on such note, bill, or draft; and for such protest, notifying parties making the certificate in form aforesaid, and record of his proceedings, he shall be entitled to a fee of one dollar and fifty cents and no more.

RHODE ISLAND.

Bills of Exchange.

All bills of exchange drawn at sight, which shall be due and payable in this State, shall be deemed due and payable on the day of presentation without grace.

January, 1849, § 2. It shall be lawful for any person having a right to demand any sum of money upon a foreign protested bill of exchange, to commence and prosecute an action for principal, damages, interest, and charges of protest, against the drawers or indorsers, jointly or severally, or against either of them separately; and judgment shall be given therefor, together with cost of suit.

Fees of Notaries.

For noting any note, bill of exchange, order, or check for non-payment or non-acceptance,	\$ 0. 25
For every notice more than one,	0.10
For travel of more than one mile, per mile,	0.08
For extending a protest for the non-acceptance or the non-payment of a note, bill of exchange, order, or check, and recording the same,	0.75

VERMONT.

Bills and Notes.

1839, Tit. XVIII., Chap. 73, § 1. (*Notes, etc., executed or payable in another State, subject to Grace.*) — All bills of exchange, drafts, and promissory notes, executed in any other State, and payable in this State, and all such bills, drafts, and notes executed in this State and payable in any other State, shall be entitled to the usual mercantile privilege of three days' grace.

§ 2. (*Limitation of foregoing Section.*) — The provisions of the foregoing section shall not extend to any contract payable on demand, or in any way but in money.

§ 3. (*Notes, not subject to Grace, falling due on Sabbath, payable on Monday.*) — Whenever any bill or note, or other contract not subject to grace, shall fall due on the Sabbath, the same shall, for every purpose, be taken and considered as due on the Monday next following.

§ 4. The indorsee of any bill or promissory note, for the payment of money, to any person, or order, or bearer, may maintain an action in his own name for the recovery of the money.

§ 5. The holder of any bill or note, payable in money to the bearer, or to any person or bearer, may maintain an action thereon in his own name without indorsement.

Fees of Notaries Public.

For each protest under seal, and the notices, one dollar; for each certificate under seal, twenty-five cents.

NEW HAMPSHIRE.

1843, Tit. XXI., Chap. 180, § 10. (*No Action for Bills till after Grace.*) — No bill of exchange, negotiable promissory note, order, or draft, except such as are payable on demand, shall be payable until days of grace have been allowed thereon, unless it appear in the instrument that it was the intention of the parties that days of grace should not be allowed.

Tit. III., Chap. 14, § 3. The protest of any bill of exchange, note, or order, duly certified by any notary public under his hand and official seal, shall be evidence of the facts stated in such protest, and of the notice given to the drawer or indorsers.

Tit. XXIX., Chap. 229, § 24. (*Fees of Notaries.*) — For every protest under seal, fifty cents; every certificate under seal, twenty-five cents; for waiting on a person to demand payment, or to witness any matter, and certifying the same under seal, fifty cents; for every notice of non-payment to any party to a bill or note, twenty-five cents.

CONNECTICUT.

All promissory notes for \$ 35 or upwards are negotiable.

The days of public Fast, Thanksgiving, and Christmas, and the Fourth of July are legal holidays.

Fees of Notaries Public.

For noting a bill of exchange or promissory note for protest,	\$ 0.25
For entering a protest of the same,	0.50
For recording a protest,	0.25
For noting without protest,	0.50
For each notice to indorsers,	0.25
For travel, per mile,	0.09

NEW YORK.

Bills and Notes.

§ 1. (*Promissory Notes payable to Order or to Bearer Negotiable.*) — All notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned,

shall be due and payable as therein expressed; and shall have the same effect, and be negotiable in like manner, as inland bills of exchange, according to the custom of merchants.

§ 2. (*Signature by Agent.*) — Every such note, signed by the agent of any person, under a general or special authority, shall bind such person, and shall have the same effect, and be negotiable as above provided.

§ 3. (*Corporations included.*) — The word "person," in the two last preceding sections, shall be construed to extend to every corporation capable by law of making contracts.

§ 4. (*Actions by Payees, Indorsees, and Holders.*) — The payees and indorsees of every such note payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned, against the makers and indorsers of the same respectively, in like manner as in cases of inland bills of exchange, and not otherwise.

§ 5. (*Effect when made payable to Order of Maker.*) — Such notes, made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity, as against the maker and all persons having knowledge of the facts, as if payable to bearer.

§ 6. (*Acceptances of Bills to be in Writing, etc.*) — No person within this State shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself, or his lawful agent.

§ 7. (*Effect of Acceptance on separate Paper.*) — If such acceptance be written on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom such acceptance shall have been shown, and who, on the faith thereof, shall have received the bill for a valuable consideration.

§ 8. (*Written Promises to accept.*) — An unconditional promise, in writing, to accept a bill before it is drawn, shall be deemed an actual acceptance, in favor of every person who, upon the faith thereof, shall have received the bill for a valuable consideration.

§ 9. (*Refusal to accept a Bill.*) — Every holder of a bill, presenting the same for acceptance, may require that the acceptance be written on the bill. A refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for non-acceptance.

§ 10. (*Rights of Drawers in certain Cases not to be affected.*) — The four last sections shall not be construed to impair the right of any person, to whom a promise to accept a bill may have been made, and who, on the faith of such promise, shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill.

§ 11. (*Destroying Bill or Refusal to return it, when accepted.*) — Every person, upon whom a bill of exchange is drawn, and to whom the same is delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill, accepted or non-accepted, to the holder, shall be deemed to have accepted the same.

§§ 12-17 provide for making demand of acceptance or payment of

bills and notes, and of giving notice of non-acceptance and non-payment in case any portion or district of the city of New York shall be the seat of any contagious disease, and notice shall have been given by proper authority that communication with the same is dangerous, the clerk of the city and county of New York is directed to keep a book, where all persons of business shall register their names and places of business, and designate the places out of the infected district where notices may be sent to them ; and any presentment of bills and notes for acceptance or payment may be made at such places designated. And if any person has neglected to register his name and place of business, presentment may be made to the clerk of the city, and payment demanded, and notices to such persons may be left at the post-office of the city of New York.

§ 18. (*Damages on Non-payment of Bills.*) — The rate of damages to be allowed and paid upon the usual protest for non-payment of bills of exchange, drawn or negotiated within this State, shall, in the following cases, be as follows : —

1. (*Bills on certain Northern and Western States.*) If such bill shall have been drawn upon any person or persons at any place in either of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Ohio, Delaware, Maryland, or Virginia, or in the District of Columbia, three dollars upon the hundred upon the principal sum specified in such bill.

2. (*On certain Southern and Western States.*) If such bill shall have been drawn upon any person or persons at any place in either of the States of North Carolina, South Carolina, Georgia, Kentucky, or Tennessee, five dollars upon the hundred, upon the principal sum specified in such bill.

3. (*On other States and places on this Continent, etc.*) If such bill be drawn upon any person or persons at any place in any other State or Territory of the United States, or at any other place on or adjacent to this continent and north of the equator, or in any British or other foreign possessions in the West Indies, or elsewhere in the Western Atlantic Ocean, ten dollars upon the hundred, upon the principal sum specified in such bill.

4. (*Bills on Europe.*) If such bill shall have been drawn upon any person or persons in any part or place in Europe, ten dollars upon the hundred, upon the principal sum specified in such bill.

§ 19. (*Damages to be in Lieu of certain Interest, Charges, etc.*) — Such damages shall be in lieu of interest, charges of protest, and all other charges incurred previous to and at the time of giving notice of non-payment ; but the holder of such bill shall be entitled to demand and recover lawful interest upon the aggregate amount of the principal sum specified in such bill, and of the damages thereon, from the time at which notice of protest for non-payment shall have been given, and payment of such principal sum shall have been demanded.

§ 20. (*No Reference to Rate of Exchange when Bill payable in Money of the United States.*) — If the contents of such bill be expressed in the money of account of the United States, the amount due thereon, and of

the damages herein allowed for the non-payment thereof, shall be ascertained and determined, without any reference to the rate of exchange existing between this State and the place on which such bill shall have been drawn, at the time of the demand of payment, or of notice of non-payment.

§ 21. (*Otherwise when payable in Foreign Currency.*)— If the contents of such bill be expressed in the money of account or currency of any foreign country, then the amount due, exclusive of the damages payable thereon, shall be ascertained and determined by the rate of exchange, or the value of such foreign currency, at the time of the demand of payment.

§ 22. (*Damages on Non-acceptance of Bills.*)— Where a bill of exchange shall be protested for non-acceptance, the same rate of damages shall be allowed on the protest for non-acceptance as provided in the four last sections; and it shall be in lieu of interest, charges of protest, and all other charges incurred previous and at the time of giving notice of non-acceptance, but the holder shall be entitled to recover interest upon the aggregate amount of the principal sum specified in the bill, and of the damages thereon, from the time at which notice of protest for non-acceptance shall have been given.

§ 23. (*Who to recover such Damages.*)— The damages allowed by this title shall be recovered only by the holder of a bill, who shall have purchased the same, or some interest therein, for a valuable consideration.

§ 24. (*Notices by Mail, how to be directed.*)— In all cases where a notice of non-acceptance of a bill of exchange, or non-payment of a bill of exchange, promissory note, or other negotiable instrument, may be given by sending the same by mail, it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resided at the time of drawing, making, or indorsing such bill of exchange, promissory note, or other negotiable instrument; unless such person, at the time of affixing his signature to such bill, note, or other negotiable instrument, shall, in addition thereto, specify thereon the post-office to which he may require the notice to be addressed.

§ 25. (*Application of last Section.*)— Nothing in this act shall apply to bills of exchange, promissory notes, or other negotiable instruments, made or drawn before this act takes effect. (Sec. 2, Chap. 141, of 1835.)

Public Notaries.

Rev. Stat., Vol. II. p. 382. Part III. §§ 50 – 55.

§ 50. (*Powers of Public Notaries.*)— Notaries public have authority to demand acceptance and payment of foreign bills of exchange, and to protest the same for non-acceptance and non-payment; and to exercise such other powers and duties as by the law of nations, and according to commercial usage, or by the laws of any other state, government, or country, may be performed by notaries public.

§ 51. They may also demand acceptance of inland bills of exchange.

and payment thereof, and of promissory notes, and may protest the same for non-acceptance or non-payment, as the case may require. But neither such protest, nor any note thereof, made by any notary in this State, shall be evidence in any court of this State of any facts therein contained, except in the cases specified in the next section.

§ 52. (*Memorandums by them.*) In case of the death or insanity of any notary public, or of his absence or removal, so that his personal attendance or his testimony cannot be procured in any mode provided by law, the original protest of such notary, under his official seal, upon such seal and his signature being duly proved, shall be presumptive evidence of the fact of any demand of acceptance or of payment, therein stated.

§ 53. (*Their Liabilities for Misconduct.*)—For any misconduct in any of the cases where notaries public appointed under the authority of this State are authorized to act, either by the laws of this State or of any other State, government, or country, or by the law of nations or by commercial usage, they shall be liable to the parties injured thereby for all damages sustained; and shall be subject to criminal prosecution and punishment, in the same cases, and in the same manner, in which other public officers of this State would be liable for misconduct in any official duty or act authorized or enjoined by the laws of this State.

§ 55. (*Certificate of Notary under Seal, Evidence of Protest and of Notice.*)—In all actions at law, the certificate of the notary, under his hand and seal of office, of the presentment by him of any promissory note or bill of exchange for acceptance or payment, and of any protest of such bill or note for non-acceptance or non-payment, and of the service of notice thereof on any or all of the parties to such bill of exchange or promissory note, and specifying the mode of giving such notice, and the reputed place of residence of the party to whom the same was given, and the post-office nearest thereto, shall be presumptive evidence of the facts contained in such certificate; but this section shall not apply to any case in which the defendant shall annex to his plea an affidavit, denying the fact of having received notice of non-acceptance or non-payment of such note or bill.

Fees of Notaries Public.

R. S., Title 3, Part III. Chap. X.

§ 57. It shall not be lawful for any notary public, directly or indirectly, to demand or receive for the protest for non-payment of any note, or for the non-acceptance or non-payment of any bill of exchange, check, or draft, and giving the requisite notices and certificates of such protest, including his notarial seal, if affixed thereto, any greater fee or reward than seventy-five cents; and it shall be the duty of such notary to affix his seal to such protest, free of expense, except as above (see below), whenever he shall be requested so to do; and he shall also give a certificate under his seal free of expense, except as aforesaid (see below), under the provisions of the eighth section of the act entitled, "An Act relative to proceedings in suits commenced by declaration, and for other purposes," passed April 29, 1833. Sec. 1 of chap. 476 of 1837.

For drawing and copy of every other protest, seventeen cents for every folio ; and for sealing the same, twenty-five cents.

For drawing and copy of any affidavit or other paper or proceeding, for which provision is not herein made, the same fees as are allowed to attorneys in the Supreme Court for drafts and copies.

NEW JERSEY.

It is provided by statute that inland bills are put on the same footing with foreign bills, and must be protested.

Fees of Notaries.

§ 6. For every attestation, protestation, and other instrument of publication, under his seal of office, relative to a foreign bill of exchange, one dollar, and for recording the same in a book kept for that purpose, seventy-five cents ; for every attestation, protestation, and other instrument of publication, under his seal of office, relative to inland bills of exchange or promissory notes, if said notes or bills exceed one hundred dollars, the sum of fifty cents, and if one hundred dollars or less, the sum of thirty cents, and for recording the same in a book kept for that purpose, the sum of twenty-five cents.

§ 7. Every notary public or justice of the peace, upon protesting any foreign or inland bill of exchange or promissory note, in addition to the duties already prescribed, and without further compensation, shall record, in a book kept for that purpose, the time when, the place where, and upon whom, demand of payment was made, with a copy of the notice of non-payment, how served, and the time when ; and if sent by post, to whom the same was directed, at what place, and when the same was put into such post-office, to which record they shall sign their names.

PENNSYLVANIA.

Bills of Exchange.

II. The damages which are to be recovered upon any bill of exchange shall be in lieu of interest and all other charges, except the charges of protest to the time when notice of the protest and demand of payment shall have been given and made as aforesaid, and the amount of such bill and the damages payable thereon, as specified in this act, shall be ascertained and determined by the rate of exchange, or value of the money or currency mentioned in such bill, at the time of notice of protest and demand of payment, as before mentioned. (Passed March 30, 1821.)

XI. (*Bills, etc. payable out of the State held negotiable.* — That all bills of exchange, drafts, orders, checks, promissory notes, or other instruments in form, nature, or similitude thereof, that shall or may hereafter be made, or be drawn or indorsed to order within this Commonwealth, upon any person or persons, body politic or corporate copartnership, firm or institution, of or in, or that shall be made payable in, any other State Territory, country, or place whatsoever, for any sum or sums of money with the current rate of exchange in Philadelphia, or such other place

within this Commonwealth where the same may bear date, or in current funds, or such like qualifications superadded, shall be held to be negotiable by indorsement, and recoverable by the indorsee or indorsees, in his, her, or their name or names, in the same manner, to all intents and purposes, as bills of exchange and promissory notes formally drawn and ordinarily in use and negotiable within this Commonwealth, are now by law recoverable therein. (Passed April 5, 1849.)

Chap. 860, III., provides that payment of all notes, checks, bills of exchange, or other instruments negotiable by the laws of this Commonwealth, and becoming payable on *Christmas day*, or the *first day of January*, the *fourth day of July*, or any other day fixed upon by law, or by the proclamation of the Governor of this Commonwealth, as a day of general thanksgiving, or for the general cessation of business in any year, shall be deemed to become due on the secular day next preceding the aforementioned days, respectively; on which said secular days demand of payment may be made, and in case of non-payment or dishonor of the same protest may be made, and notice given in the same manner as if such notes, checks, bills of exchange, or other instruments, fell due on the day of such demand; and the rights and liabilities of all parties concerned therein shall be the same as in other cases of like instruments legally proceeded with: *Provided*, that nothing herein contained shall be so construed as to render void any demand, notice, or protest made or given as heretofore, at the option of the holder, nor shall the same be so construed as to vary the rights or liabilities of the parties to any such instruments heretofore executed. (Passed April 11, 1848.)

The sections VII., VIII. and IX. of an act passed 9th day of April, 1849, relating to notice of non-payment and non-acceptance, and the place of payment of bills and notes have been repealed by act dated 8th April, 1851.

It has been decided by the Courts of Pennsylvania, that the indorsement of a sealed note, in blank, by the payer, does not create a liability on the part of the indorser, nor that such an indorsement authorises the holder to insert any guarantee of payment over the indorser's name; nor will the indorser be liable on an allegation of a promise, unless it be express and explicit, and clearly established by testimony. (*Folwell v. Beaver*, 13 S. & R., 311.)

The blank indorsement of a note by one not a party to it, although out of the usual form, makes the indorser *prima facie* liable as such, and entitles him to the advantages of an indorser in a suit against him by the payer. But whether the indorser is liable as such, or as guarantor, depends on the intention and understanding of the parties. (*Taylor v. McCune*, Penn. State R. 12, p. 460.)

Notice of dishonor addressed to an indorser at the post-office at which he habitually receives communications by mail, is sufficient, though such office be not the nearest to his place of abode. (*Mercer v. Lancaster*, Barr's R. 9, p. 160.)

The holder of a bill is bound to use reasonable diligence to ascertain the residence of the drawer, in order to give him notice of its dishonor. It is not sufficient to look for him at the place where the bill is drawn. (*Fisher v. Evans*, 9 Binn., 542.)

Notice to an indorser must be given, although he is beyond sea, if the place of his residence be known; and reasonable diligence must be used to find out his place of residence. (*McMurtrie v. Jones*, 3 W. C. C. R., 206.)

A note is not obligatory and valid until it has been actually delivered to the party for whose use it is drawn; and, as it receives its life, existence and negotiable character at the place where it is so delivered, the law of that place must regulate all its subsequent operations. A, in pursuance of a contract for the purchase of land of B, drew his promissory note, payable at the bank of the United States, dated at Philadelphia, in favor of C, who indorsed the note, and delivered it at New York to B. Held, that the note having taken effect at New York, became liable to the local law of that State. (*Ludlow v. Bingham*, Court of Errors, 4 D., 47 & 61.)

A bill of exchange, drawn by A in the *West Indies*, upon himself at Philadelphia, is to be governed by the laws of Pennsylvania, where it was payable. (*Golden v. Prince*, 3 W. C. C. R., 313.)

Fees of Notaries Public.

For protest of bill of exchange, registering seal, and other service,	\$ 1.00
Registering foreign bill protested, with certificate,	0.50
Registering protest of a bill of exchange or promissory note for non-acceptance or non-payment,	0.25
Noting a bill of exchange, note, or thing properly protestable either for non-acceptance or non-payment,	0.37½

DELAWARE.

All checks, notes, drafts, or bills, foreign or inland, payable without time, or at sight, are due and payable on presentment, without grace.

Fees of Notaries.

For protest of a promissory note, bill of exchange, draft, or check, and registering the same,	\$ 0.80
Giving notice of a protest, personal or otherwise, and registering the notice and manner thereof, for each notice,	0.20
For exemplification, under hand and notarial seal, of such protest,	0.25
Protest of a foreign bill of exchange, (to wit, a bill of exchange drawn beyond sea,) and registering the same,	1.00
Giving notice of such protest, personal or otherwise, and registering the notice and manner thereof, for each notice,	0.37
Exemplification, under hand and notarial seal, of such protest,	0.75
Registering a bill of exchange, promissory note, bank note, or check, where no fee for protest is charged,	0.25

Registering a common sea protest,	\$ 0.75
Registering a foreign sea protest,	1.00
Registering a protest against a merchant or other person, for detaining vessel beyond proper time, with answers and persistence to the protest,	4.00
Exemplification, under hand and notarial seal, of either of said three last-mentioned protests,	1.00
Registering an obligation, letter of attorney, bill of sale, or other writing of similar length,	1.00
Taking and certifying, under hand and notarial seal, the acknowledgment of a deed, letter of attorney, or other instrument,	1.00
Administering and certifying, under hand and notarial seal, oath or affirmation,	0.50
Drawing affidavit, or deposition, two cents a line.	
Taking depositions under order of court, a sum to be taxed by the court.	
Certificate under hand and notarial seal, when no other service for which a fee is allowed is performed,	0.35

MARYLAND.

Chap. 253. § 1. — A protest duly made by a notary public of a promissory note, for non-payment, or of a bill of exchange, whether foreign or inland, for non-acceptance or non-payment, shall be *prima facie* evidence of such non-payment or non-acceptance, and of the presentment of such note for payment, or of such bill for acceptance or payment, at the time and in the manner stated in the protest.

§ 2. When such protest shall state that notice of such non-payment or non-acceptance has been sent or delivered to the party or parties to such note or bill, and the manner of such notice, such protest shall be *prima facie* evidence that such notice has been sent or delivered in the manner therein stated.

Fees of Notaries Public.

Chap. 108. — The fees to be received by the notaries public shall be as follows : —

Drawing all proceedings not exceeding two sides, fifty cents ; drawing all proceedings exceeding two sides, twenty cents per side ; registering or copying proceedings, for every such side, ten cents ; presenting a bill of exchange for acceptance, if accepted and not afterwards protested for non-payment, one dollar ; presenting a bill or note for payment, if paid when presented, one dollar ; noting a bill for non-acceptance, if not protested for non-acceptance or non-payment, one dollar ; protesting a bill or note, or the like, for non-acceptance or non-payment, one dollar and seventy-five cents ; noting a marine protest, one dollar ; affixing notarial seal, fifty cents ; for every search where no copy is made, twenty-five cents ; administering an oath or taking an acknowledgment, twelve and a half cents ; and for all other acts and services in proportion to the aforesaid fees, to be paid at the time of doing the same.

OHIO.

Bills of Exchange and Negotiable Instruments.

By Chapter 75 of the Revised Statutes, all bonds, promissory notes, and bills of exchange, inland and foreign, drawn for any sum of money certain, and made payable to any person or order, or to any person or bearer, or to any person or assigns, are made negotiable by indorsement; three days of grace are allowed, and notice must be given to indorsers within a reasonable time after non-payment, unless the indorsement shall express in writing other conditions.

10. Sect. 1. (*Damages on Foreign protested Bills of Exchange.*)—When any bill of exchange shall be drawn for the payment of any sum of money, and such bill shall be legally protested for non-acceptance or non-payment, the drawer or drawers, indorser or indorsers, shall be subject to the payment of *twelve* per cent. damages thereon, if drawn on any person or body corporate without the jurisdiction of the United States; and *nine* per cent. damages thereon, if drawn on any person or body corporate within the jurisdiction of the United States, and without the jurisdiction of this State; and the bills shall in all cases bear an interest of *six* per cent. from the date of the protest, until the money therein drawn for shall be fully satisfied and paid.

(It has been decided under this section, that the right of a party to damages does not depend upon the place of payment, but upon the place of residence of the drawer. No damages are allowed upon a bill drawn upon a person in Ohio, payable in a sister State, and protested for non-payment.)

11. Sect. II. It shall be lawful for any person, having a right to demand any sum of money upon any protested bill of exchange as aforesaid, to commence and prosecute an action for principal, damages, and charges of protest, against the drawers or indorsers, jointly or severally, or against either of them separately. And judgment shall and may be given for such principal, damages, and charges, and interest upon such principal after the rate aforesaid, to the time of such judgment, together with costs of suit.

Fees of Notaries.

Chap. 77, 6. Sect. II. Every notary may demand and receive for every attestation, protestation, or other instrument of publication, under the seal of his office, the sum of fifty cents, and no more; and for recording in a book, to be kept for that purpose, each attestation, protestation, or other instrument of publication, fifty cents, and no more.

KENTUCKY.

Regarding Bills of Exchange.

§ 1. It is enacted, that where any foreign bill of exchange is or shall be drawn for the payment of any sum of money in which the value is or shall be expressed to be received, and where such foreign bill is or shall

be protested for non-acceptance or non-payment, the same shall carry interest from the date thereof,* after the rate of *ten* per cent. per annum, until the money therein drawn for shall be fully satisfied and paid; but lest any person having such foreign bill should, for the sake of the said interest, delay negotiating the same, or if after it shall be protested, shall not demand payment of the drawer or indorser thereof, it is hereby declared, that no person whatever shall pay more than eighteen months' interest from the date of any bill to the time it shall be presented protested to the drawer, indorser, or indorsers thereof.

§ 3. And that all foreign bills of exchange which are or shall be protested, shall, after the death of the drawer or indorser thereof, be accounted of equal dignity with a judgment; and the executors or administrators of every such drawer or indorser shall be compelled to suffer judgment to pass against them for all debts due upon protested foreign bills of exchange, before any bond, bill, or other debt of equal or inferior dignity, under the penalty of being liable to pay the same out of their own proper goods.

§ 4. If a bill of exchange for the sum of five pounds or upwards, dated at any place in Kentucky, drawn upon a person at any other place therein, expressed to be for value received, and payable at a certain number of days, weeks, or months after date, being presented to the person upon whom it shall be drawn, shall not be accepted, by subscribing his name with his proper hand to the acceptance, written at the foot or on the back of the bill, or, being accepted in that manner, and not otherwise, shall not be paid before the expiration of three days after it shall become due, the person to whom it shall be payable, or his agent or assigns, may cause the same to be protested by a notary public, or if there be no such, by any other person, in the presence of two or more credible witnesses, for non-acceptance, in the form or to the effect following, written under a fair copy of the bill: — "Know all men that I, _____, on the _____ day of _____, at the usual place of abode of the above-named _____, presented to him the bill of which the above is a copy, and which said _____ did not accept, whereof I, the said _____, do hereby protest the said bill, dated at _____, this _____ day of _____"; or for non-payment after acceptance in the same form or to the same effect, except that the words be inserted, "demanded payment of the bill of which the above is a copy, and which the said _____ did not pay." And the drawer, such protest being sent to him, or notice thereof in writing being given to him, or left at the place of his usual abode within fourteen days thereafter, shall pay the money mentioned in the bill to the person entitled to it, with legal interest from the day of the protest; and he to whom the bill shall be payable, neglecting to procure the protest to be made, or due notice thereof to be given, shall be liable for all costs and damages accruing thereby; if the bill shall be lost or shall miscarry, the drawer shall assign and deliver an-

* Indorsements on negotiable notes of the grade of foreign bills are embraced by the above statute concerning interest. *Reid v. Bank of Kentucky*, 1 Mon. 93

other of the same tenor, sufficient security being given to indemnify him against all persons who may claim under the former

Fees of Notaries Public.

Notaries shall and may demand and receive for every attestation, protestation, and all other instruments of publication, under their seal of office, the sum of eighty-three cents, and no more; and for recording in a book to be kept for that purpose each attestation, protestation, and all other instruments of publication, the sum of eighty-three cents, and no more.

MISSOURI.

Bills of Exchange.

Chap. 18, § 6. Every person upon whom a bill of exchange may be drawn, and to whom the same shall be delivered for acceptance, who shall destroy such bill, or refuse, within twenty-four hours after such delivery, or within such period as the holder may allow, to return the bill, accepted or non-accepted, to the holder, shall be deemed to have accepted the same.

§ 15. Every promissory note for the payment of money, expressed on the face thereof to be for "value received, negotiable and payable without defalcation," shall be due and payable as therein expressed, and shall have the same effect, and be negotiable in like manner, as inland bills of exchange.

Fees of Notaries.

For noting a bill of exchange or note for protest,	\$ 0.10
For entering protest of same,	0.25
For registering a protest,	0.25
For noting without protest,	0.25
For notice to each indorser or other party,	0.10
For travel per mile,	0.05

ILLINOIS.

Fees of Notaries.

For noting a bond, promissory note, or bill of exchange, for protest,	\$ 0.25
For protesting and recording the same,	0.50
For noting, without protest,	0.25
For notice to indorsers, etc., each,	0.25
For affixing the seal notarial,	0.25
For each certificate,	0.25

MICHIGAN.

Fees of Notaries.

For drawing and copy of protest of the non-payment of a promissory note, etc., or of the non-acceptance of a bill, in cases where by law such protest is necessary,	\$ 0.50
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For drawing and copy of every other protest,	\$ 0.25
For drawing, copy, and serving every notice of non-payment of a note, or non-acceptance of a bill,	0.25
For drawing any affidavit, or other paper or proceeding, for which provision is not herein made, twenty-five cents for each folio, and for copying the same, six cents for each folio.	

TENNESSEE.

Fees of Notaries.

For recording in a well-bound book, to be by him kept for that purpose, each attestation, protestation, and other instrument of publication,	\$ 2.00
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VIRGINIA.

Fees of Notaries.

For the record of protest, making out instrument of protest under his official seal, and notice of dishonor to one person be- sides the maker of a note or acceptor of a bill,	\$ 1.00
For every additional notice,	0.10

GEORGIA.

Bills of Exchange and Promissory Notes.

Some of the statutes of England have been adopted, and by them it has been enacted, that all and every bill of exchange, drawn within the State on any other place in the State, of the sum of five pounds sterling, or upwards, and payable a certain time after date or sight, if accepted by underwriting the same, and if not paid after three days' grace, the holder of the bill may and shall cause the bill to be protested by a notary public, and if there be no such officer, by any other substantial person of the place in the presence of two or more credible witnesses, which protest shall be written under a fair written copy of the bill in the form following:—

“Know all men that I, A. B., on the ——— day of ———, at the usual place of abode of the said ———, have demanded payment of the bill, of the which the above is a copy, which the said ——— did not pay; wherefore I, the said ———, do hereby protest the said bill. Dated this ——— day of ———.”

Which protest, so made as aforesaid, shall within fourteen days after making thereof be sent, or otherwise due notice shall be given thereof, to the party from whom the said bills were received, who is, upon producing such protest, to repay the bills, together with all the interest and charges from the day such bills were protested; and in case of neglect of making protest and giving notice within the time specified above, the person so neglecting thereof is and shall be liable to all costs, damages, and interest which shall accrue thereby.

Bills lost or miscarried.—In case any such inland bills of exchange

shall be lost or miscarried, before payment is due, then the drawer of such bills shall be obliged to give another bill or bills of the same tenor with the first; but the person to whom they are delivered shall give security, if demanded, to the drawer, to indemnify him against all persons whatever, in case the bills, alleged to be lost or miscarried, shall be found again.

When protested for Non-acceptance. — In case such bills of exchange shall not be accepted, the holder may and shall cause the bills to be protested for non-acceptance, as in case of foreign bills of exchange; for which protest shall be paid two shillings, and no more.

Acceptance by Underwriting. — Provided that no acceptance of such inland bill of exchange shall be sufficient, unless the same be underwritten or indorsed in writing thereon; and in case acceptance be refused, no drawer of such inland bill of exchange shall be liable to pay any costs, damages, or interest thereon, unless such protest be made for non-acceptance, and within fourteen days after such protest the same be sent, or otherwise notice thereof be given, to the party from whom such bill was received, or left in writing at the place of his usual abode; and if such bill be accepted and not paid before the expiration of three days of grace, then no drawer of such bill shall be compellable to pay any costs, damages, or interest thereupon, unless a protest be made and sent, or notice thereof be given, in manner as aforesaid. Nevertheless every drawer of such bill shall be liable to make payment of costs, damages, and interest upon such inland bill, if any one protest be made of non-acceptance or non-payment thereof, and notice thereof be sent, given, or left as aforesaid.

Protest when not necessary. — Provided, that no such protest shall be necessary either for non-acceptance or non-payment of any inland bill of exchange, unless the value be acknowledged and expressed in such bill to be received, and unless such bill be drawn for the payment of twenty pounds sterling, or upwards.

40. *Damages on Domestic Bills of Exchange.* — Whenever any bill of exchange hereafter to be drawn or negotiated within this State, upon any person or persons of or in any State, Territory, or District of the United States, shall be returned unpaid, and shall have been duly protested for non-payment in the manner usual in cases of foreign bills of exchange, the person to whom the same may be payable shall be entitled to recover and receive of and from the drawer or drawers, or the indorser or indorsers, of such bill of exchange, five per cent. damages over and above the principal sum for which said bill of exchange shall have been drawn, together with lawful interest on the aggregate amount of such principal sum, from the time at which notice of such protest shall have been given, and the payment of the said principal sum and damages shall have been demanded. (Dec. 19, 1823.)

41. *Extended to other Cases.* — All the provisions of the preceding paragraph are extended to all bills of exchange hereafter drawn in the State upon, or made payable at, any place within the United States, out of this State, without reference to the residence of the drawer or acceptor. (Dec. 21, 1839.)

42. *Damages on Foreign Bills of Exchange.* — On the bills of exchange drawn in this State upon any place beyond the limits of the United States, which shall be returned protested for non-payment, it shall be lawful for the holder to recover from those liable for the payment thereof the amount of the said bill of exchange, with postages, protests, and other necessary expenses, and interest upon the amount of these sums from the date of the protest until the time of presenting the same for payment in this State, at the rate established at the place at which the bill was payable; and also such premium upon the face of the bill, and the foreign postages, protest, and necessary expenses, as good bills of exchange upon the same place at which such bill was made payable, or are worth, at the time and place of its demand in this State; but if such bills are then and there at a discount, the holder shall deduct such discount upon and from the items of principal, foreign postage, protest, and necessary expenses.

43. *Rate of Damages on the Amount.* — It shall be lawful for the holder of such bill of exchange, so returned protested as aforesaid, also to claim and receive from the person or persons liable therefor, damages at the rate of ten per cent. upon the amount for which the said bill was drawn.

44. *Legal Interest may be recovered.* — It shall be lawful for the holder or holders of such bill or bills returned protested as aforesaid, to recover the legal interest established in this State, [which is eight per cent. per annum,] from the time of presentment for settlement until paid, upon the sum or sums to which he would be entitled by the before mentioned mode of settlement.

Promissory Notes.

48. *Negotiability.* — All bonds and other specialties, and promissory notes, and other liquidated demands, bearing date since the 9th of June, 1791, whether for money or other thing, shall be of equal dignity, and be negotiable by indorsement, in such manner and under such restrictions as are prescribed in the case of promissory notes: Provided, that nothing herein contained shall prevent the party giving any bond, note, or other writing, from restraining the negotiability thereof, by expressing in the body thereof such intention.

[Negotiable notes of hand are put on the same footing with inland bills of exchange.]

49. *Indorsers not entitled to Notice.* — The practice heretofore required, of making a demand of the makers of promissory notes and other instruments, for the payment and performance of the same, and their giving notice of such demand within a reasonable time to the indorsers of said promissory notes and other instruments, shall cease and become entirely unnecessary to bind said indorsers.

50. *On the same Footing with Securities.* — And whenever any person whatever indorses a promissory note or other instrument, he shall be held, taken, and considered as security to the same, and be in all respects bound as security, until said promissory note or other instrument is paid off and discharged, and shall be liable to be sued in the same manner and

in the same action with the principal or maker of said promissory notes or other instruments.

51. *Exception as to Notes in Bank.* — Provided, always, that nothing herein contained shall extend to any promissory notes which shall be given for the purpose of negotiation, or intended to be negotiated, at any chartered bank, or which may be deposited in any chartered bank for collection; and provided also, that nothing contained in this act shall be so construed as to prevent the indorser from defining his liability in the indorsement. (Dec. 26, 1826.)*

52. *Security may compel the Collection of Notes.* — In every case which may hereafter arise, where the security or indorser of any promissory note or other instrument, after the same has or shall become due, has required, or shall hereafter require, the holder thereof to proceed to collect the same, and the real holder has not proceeded or shall not proceed to do so, within three months after such notice or requisition, the indorser or security shall be no longer liable. (Dec. 26, 1831.)

Fees of Notaries.

For every protest and oath included, not exceeding sixteen copy sheets of ninety words,	\$ 2.00
For each attendance on any other person to prove any matter or thing as a notary public, and certifying the same,	0.50
Noting a protest,	1.00
Registering a protest, per copy sheet,	0.06½
Copy of a protest per copy sheet,	0.06½

SOUTH CAROLINA.

Fees of Notaries Public.

For every protest, ten shillings; for a duplicate of protest and certificate, per copy sheet, five pence; for each attendance on any person to prove any matter or thing, and certifying the same, three shillings; for every notarial certificate with seal affixed, two shillings and six pence [sterling].

INDIANA.

Damages on protested bills of exchange, drawn on persons out of the United States, shall be ten per cent.; if drawn on persons in any place in the United States, five per cent.

Such damages shall be in lieu of interest, charges of protest, and all other charges, previous to and at the time of giving notice.

And the damages are to be without reference to the rate of exchange.

But the drawer or indorser is not liable to damages, if the bill shall be paid upon notice of non-acceptance, and upon demand of the principal sum.

No damages on inland bills or foreign bills drawn payable in this State.

* Sec. 2 of this act superseded by next, ¶, 52:

Fees of Notaries.

For each protest of note, bill, bond, or other instrument, fifty cents; and for each notice, twenty-five cents; but not more than one notice shall be chargeable for any one party to such bill, note, or instrument, and no fees shall be allowed to any notary public for any protest on any promissory note, or inland bill of exchange, and no other fees than the fees for notice of non-payment; protests made by officers of a bank not valid; fees for recording protest, seventy-five cents, as to foreign bills of exchange; as to inland bills of exchange, twenty-five cents.

FLORIDA.

Notaries Public.

They are empowered to administer oaths, in all cases, in which by law oaths are required to be administered, and to attest, protest, or publish any writing or document which so requires it.

Fees.

They shall receive for protesting bill of exchange or promissory note, and registering the same,	\$ 1.00
For noting bill of exchange for non-acceptance or non-payment,	0.50
Administering each oath,	0.10
Attending at a demand, tender, or deposit, and noting the same,	1.00
Noting protest of a captain of vessel,	1.00
And for extending protest and copy,	5.00
Registering foreign protested bill or protest,	0.50
Each certificate with seal thereto,	1.00
Each order for recovery,	1.00
Copying any paper necessary to be copied, containing one hundred words or less, twenty cents; if containing more than one hundred words, at the rate of ten cents for every subsequent one hundred words.	

ALABAMA.

Fees of Notaries Public.

For protesting any bill, registering, and seal,	\$ 1.00
For attesting letters of attorney, and seal,	0.50
For notarial affidavit to an account or other writing, and seal,	0.50
For registering a foreign bill protested, with certificates,	0.75
For registering a protest of a bill of exchange, or note for non-payment or non-acceptance,	0.25
For every oath or affirmation, and seal,	0.50
For a notarial procuration, and seal,	1.00
For certifying sales at auction, and seal,	0.75
For taking proofs of debts, to be sent abroad, or proof and acknowledgment of letters of attorney, and seal,	0.75
For protest in insurance cases, and seal,	1.00

TEXAS.

Fees of Notaries Public.

For protesting a bill or note for non-acceptance or non-payment, registering and seal, two dollars ; for protest in all other cases, twenty cents for each hundred words, and fifty cents for the certificate and seal ; for taking the acknowledgment or proof of any deed or any other instrument of writing for registration, with certificate and seal, fifty cents ; for administering an oath or affirmation with certificate and seal, fifty cents ; for taking the acknowledgment of a married woman, to a deed or any other instrument of writing, authorized to be executed by her, with certificate and seal, one dollar and fifty cents.

ADDITIONS TO CHAPTER VI.

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Time of Maturity of Notes and Bills.

To prevent mistakes in counting the time when a note or bill arrives at maturity, we make the following additional remarks to Chapter VI.:

When the time is computed by days, the day on which the event happens is to be excluded; hence, where a bill or note is payable at so many days after date, or after sight, the day of the date, or the day of the acceptance, must be excluded. For instance, a note dated the 1st of January, payable ten days after date, *without grace*, falls due on the 11th; and if *with grace*, would fall due on the 14th of January. So a bill payable thirty days after sight, *without grace*, if accepted on the 1st of January, would be due on the 31st of that month; and if *with grace*, it would fall due on the 3d of February.

If the time is computed by months, the bill or note falls due, if the *days of grace* are *not counted*, on the corresponding day of the month which completed the number of months stated. For instance, a note dated the 1st of January, payable one month after date, *without grace*, falls due on the 1st of February; and if dated the 10th of January, payable one month after date, *without grace*, it falls due on the 10th of February; and if *with grace*, on the 13th.

And it is a rule not to go into the computation, whether the intervening months are shorter or longer. For instance, a note dated 1st January, payable six months after date, *without grace*, or a bill payable six months after sight, *without grace*, if accepted on the 1st of January, falls due on the 1st of July following; and if *with grace*, on the 4th of July; and as this is a holiday in the United States, on the 3d of July.

A note dated on the 28th, 29th, 30th or 31st of January, payable in a month, *without grace*, falls due on the 28th of February in common years; and in those latter cases in a leap year, on the 29th of February.

If a note be dated the 29th February, in a leap year, payable in one month, *without grace*, it will be due on the 29th March; and *with grace*, on the 1st April.

If a note is dated 30th April, payable in one month, *without grace*, it will be due on the 30th of May; and *with grace*, on the 2d June.

A note dated 29th August, payable *six* months after date, will be due, including days of grace, on the 3d of March following; and without grace it will be due, in common years, on the 28th day of February. [See Chitty on Bills, ch. 9, 406 (8th ed.); Strong on Notes, p. 213, d.; Bayley on Bills, ch. 7, sect. 1, page 238 (2d Amer. ed.); Wood v. Mullen, 3 Rob. Louis. R., p. 395; and Wagner v. Renner, 2 Rob. Louis. R., 120.]

A note being due six months after the 29th of August, is so on the 28th of February following, and does not become payable till after the expiration of the three days of grace—to wit, on the 3d of March. (Wood v. Mullen, 3 Rob. Louisiana R., p. 395.)

In the case of Wagner v. Kenner, 2 Rob. Louis. R., 120, it was held, that a note dated 31st of September will be considered as having beer

made on the 30th of that month; and if payable six months after date, it will be due on the 30th of March, and, allowing days of grace, would be presented on the 2d April following.

The court in this case said: The computation of bills or notes drawn one or more months from date, is made according to the Gregorian calendar—that is to say, from the day of the month it bears date to the corresponding day of the month of its maturity, without any attention to long or short months. For instance, a note drawn on the 28th, 29th, 30th or 31st of January, and due a month from date, will be due on the 28th of February, if the year be not bissextile, because the month of February has no other corresponding day: those drawn on the 28th or 29th of February, and due one month after date, will be due on the 28th or 29th of March, because the corresponding days are found in the month of March. A bill drawn the 31st of March, and due one month from date, will be due on the 30th of April; and on the other hand, one drawn on the 30th of April will be payable on the 30th of May, and not on the 31st.

It must also be stated, that in the case of *Dunnford v. Patterson et al.*, 7 Martin, 460, before cited, where a note dated 1st April, 1819, was made payable "on the first day of May next *fixed*," the word "*fixed*" was held to be an expression peculiar to the State of Louisiana, and tantamount to "without grace." The court said: "It appears that this mode of making notes payable on a certain day, with the addition of the word '*fixed*,' is not usual in the United States. This is a usage peculiar to our own State. If the bill says at so many days *fixed*, or at so many days without further term, there are no days of grace, and the bill must be paid on the day it becomes due."

This decision, therefore, does not conflict with the general law, that a note or bill made payable on a given day—i. e., "I promise to pay, on the 1st of May, &c.," is allowed days of grace, and this general rule also prevails in Louisiana.

Usance.

Sometimes bills are drawn payable at *usance*, or at a half usance, or at double or treble usance. By usance is meant the common period, fixed by the usage or custom of dealing between the country where the bill is drawn and that where it is payable, for the payment of bills. The usage or custom as to the time of payment, is different in different countries, and hence the same phrase imports different periods of time, from fourteen days to one, two, or even three months after the date of the bill. Double or treble usance is double or treble the usual time, and half usance is half that time; when it is necessary to divide a month upon a half usance, the division, notwithstanding the difference in the length of the month, contains fifteen days. The usance is always calculated *exclusively* of the day of the date of the bill, as it is in cases where the bill is payable a certain number of days after date or after sight. [See Chitty on Bills, ch. 9, p. 404, 405 (8th edit.); Story on Bills, s. 332.]

Computation of Time according to the Old Style.

Some countries—for instance, Russia—reckon according to the old style, or Julian Calendar, whilst almost all others reckon according to the new style, or Gregorian Calendar. The difference between the two styles is, at the present time, twelve days—that is to say, twelve days are added to the time reckoned by the old style, to bring the time to the corresponding day of the new style. Thus a bill dated the 1st of May, old style, corresponds to the 13th day, new style; and a bill dated the 1st of May, new style, corresponds to the 19th of April, old style.

The rule is, that upon a bill, drawn at a place using old style, and payable at a place using the new style, if the time is to be reckoned from the date, it shall be computed according to the style of the place at which it is drawn; otherwise, according to the style of the place where it is payable; and in former case the date must be reduced or carried forward to the style of the place where the bill is payable, and the time reckoned from thence. (Bayley on Bills, ch. 7, sec. 1, p. 238.) Thus, on a bill dated the 1st of May, old style, and payable here two months after, the time must be computed from the corresponding day of May, new style—namely, 13th of May: and on a bill dated the 1st of May, new style, and payable at St. Petersburg in Russia, two months after date, from the corresponding day of April, old style—namely, 19th of April. [Chitty on Bills, ch. 9, p. 403 (8th edit.); Story on Bills, s. 331.]

Bills and Notes Payable by Instalments.

It is said by Judge Story, that the rule of allowing days of grace seems also to apply to bills payable by instalment; and the days of grace are allowed on the falling due of each instalment. (Story on Notes, s. 224; *Bridge v. Sherborne*, 11 Mees & Wels, 374.)

When no time of payment is expressed on the face of the note, it is payable on demand, and no days of grace are allowed.

District of Columbia.

Formerly *four* days of grace were allowed in the District of Columbia, but at present only *three* days.

13 At what Time a Bill or Note falls due, and at what Time Actions may be brought thereon by the Different Parties.

1. The maker of a promissory note is bound to pay it, upon demand made at any seasonable hour of the last day of grace, and may be sued on that day, if he fail to pay on such demand. *Staples v. Franklin Bank*, 1 Met. 43; *Henry v. Jones*, 8 Mass. 453; *Farnum v. Fowle*, 12 Mass. 89; *Shed v. Brett*, 1 Pick. 401; *New England Bank v. Lewis*, 2 Pick. 125; *City Bank v. Cutter*, 3 Pick. 414; *Boston Bank v. Hodges*, 9 Pick. 420; *Church v. Clark*, 21 Pick. 310.

2. If a note is made payable at a bank, there is no default of payment on the part of the maker until the close of the usual banking hours, on the last day of grace, at such bank. *Church v. Clark*, 21 Pick. 310.

3. If no particular bank is named, the hour will be determined by the usual banking hours at the bank, or several banks, in the place where the note is payable. *Ibid.*

4. In the absence of proof to the contrary, the legal presumption is, that throughout the United States three days' grace is allowed by law on bills of exchange and promissory notes. *Wood v. Corl*, 4 Met. 203.

5. Post-notes, issued by a bank, are payable on demand made at any time, on the last day of grace, after the known and usual hour of opening the bank for business, and may be put in suit on that day, if payment is refused. *Staples v. Franklin Bank*, 1 Met. 43.

6. Under the Rev. Stat. c. 33, § 5, grace is to be allowed on post-notes issued by a bank and made payable at a day certain, "with interest until due, and no interest after," though the bank insert a memorandum on the margin of the note that it is "due" on such day. *Mechanics' Bank v. Merchants' Bank*, 6 Met. 13.

7. A bank post-note was made payable in a certain period of time, with interest "until due, and no interest after," and a memorandum on the margin stated that it was "due" on a day named, which was the last day of such period. It was held, that the bank was entitled to grace on such note. *French v. Franklin Bank*, 21 Pick. 483.

8. No usage, nor any agreement, tacit or express, of the parties to a promissory note, as to presentment, demand, and notice, will accelerate the time of payment, and bind the maker to pay it at an earlier day than that which is fixed by the law that applies to the note. *Mechanics' Bank v. Merchants' Bank*, 6 Met. 13.

9. A usage among banks to regard a bank post-note payable at a future day certain as payable without grace, (there being no express stipulation to that effect in the note itself,) would be invalid, inasmuch as it would be contrary to the provision in Rev. Stat. c. 33, § 5, that on all promissory negotiable notes, payable at a future day certain, in which there is no express stipulation to the contrary, grace shall be allowed. *French v. Franklin Bank*, 21 Pick. 483.

10. The acceptor of a bill of exchange for the accommodation of the drawer, may pay it on the last day of grace before the commencement of business hours, and forthwith bring his action against the drawer to recover an indemnity. *Whitwell v. Brigham*, 19 Pick. 117.

11. A payment of such a bill of the acceptor on the second day of grace, may take effect as a payment at the commencement of the last day of grace, as against the drawer. *Ibid.*

12. An action may be maintained upon a note against the maker, where the writ is made after sunset on the last day of grace, and is delivered to an officer on the next day, although there is no demand of payment before the writ is made. *Buller v. Kimball*, 5 Met. 94.

13. An action was sustained which was commenced against the indorser on the day the note was due, but after notice had been put into the post-office, though before it could be received by due course of mail. *Shed v. Brett*, 1 Pick. 401.

14. Where a writ against the indorser of a note was delivered to an officer, with instructions not to serve it until after he had given the indorser notice of the non-payment of the note by the maker, and the writ was not in fact served until after such notice had been given, it was *held*, that the action was not commenced until the service of the writ. *Seaver v. Lincoln*, 21 Pick. 267.

15. In an action by the indorsee of a note against the indorser, both of whom had their place of business in the same town, the writ was served on the day when the note became due, before notice to the indorser. *Held*, that the action was prematurely brought, and that it was an immaterial circumstance, that the notice had been put into the hands of the notary before the writ was in the hands of the officer. *New England Bank v. Lewis*, 2 Pick. 125.

16. Where a note was made without the knowledge of the payee, who was liable as a surety for the maker for a debt due, but not paid, against which liability the maker had promised to secure the payee, and the maker caused his own property to be attached for the purpose of securing the payment of the note; it was *held*, that the note, until assented to by the payee, did not constitute a debt "justly due" to him, within the meaning of Rev. Stat. c. 90, § 83 *et seq.*; and that therefore the attachment might be vacated under that statute, on the petition of a creditor of the maker, who had attached the same property subsequently, but before such assent was given. *Baird v. Williams*, 19 Pick. 381.

17. An action will lie against the drawer and indorsers of a bill of exchange protested for non-acceptance, before the time of payment has come. *Watson v. Loring*, 3 Mass. 557.

18. Where a bill of exchange is protested for non-acceptance, a right of action accrues immediately to the holder: he is not bound to present it for payment, or protest it for non-payment, nor, if he does so, does he thereby affect his right of action on the non-acceptance. *Lenox v. Cook*, 8 Mass. 460.

19. A note payable on demand is not regarded as dishonored within one month after its date. *Ranger v. Cary*, 1 Met. 369.

20. A promissory note made payable in a given number of days, is payable in so many days from the day of the date, and exclusive of the day of the date. *Henry v. Jones*, 8 Mass. 453.

21. Upon a note payable in eight years, with interest payable annually, an action lies for the interest as it falls due, and before the principal is

payable. Interest is allowed upon each year's interest unpaid. *Greenleaf v. Kellogg*, 2 Mass. 568; *Cooley v. Rose*, 3 Mass. 221.

22. In a declaration upon a note payable by instalments, the plaintiff declared that the intervals of two instalments had elapsed, and alleged that the whole sum of the note was due: this allegation was rejected as surplusage, and judgment given for the two instalments due. *Tucker v. Randall*, 2 Mass. 283.

23. A promissory note payable on demand, with interest after a limited term, will support an action brought before the expiration of the term; and where goods are sold and delivered, to be paid for by such a note, if the vendee neglects or refuses to give the note, the vendor may forthwith bring "*indebitatus assumpsit*" for the price. *Loring v. Gurney*, 5 Pick. 15.

24. Where a promissory note was made payable on demand, but with a clause that it was not to draw interest during the life of the promisor, it was *held*, that an action might have been commenced on the note immediately after it was given, and that consequently the statute of limitations began to run on the note from its execution, and not from the time of the promisor's death. *Newman v. Kettelle*, 13 Pick. 418.

25. In assumpsit on a promissory note payable "on demand, with interest after four months," it was *held*, that payment might be demanded immediately, and that collateral evidence to prove that the intent of the parties was that payment should not be demanded within four months, was inadmissible. *Wright v. Fisher*, 13 Pick. 419, in note.

26. A promissory note for a gross sum, payable on demand, given by the maker of several notes to the indorser, upon the promise of the indorser to pay the notes and indemnify the maker, will enable the indorser to commence an action and attach the maker's property before the indorser has paid any of the original notes, and before they have become due; but he will not be able to recover damages beyond the amount which he shall have paid on the original notes before the rendition of judgment. *Little v. Little*, 13 Pick. 426.

27. The maker of a note, made payable on time, is not liable to an action thereon before the time has elapsed, although he before that time has unfairly obtained possession thereof and refuses to return it to the payee. *Ilsey v. Jewett*, 2 Met. 168.

14. Evidence and Witnesses.

1. Witnesses.

1. A party to a negotiable security shall not be a witness to prove that at the time he gave it currency it was void, but to any facts happening afterwards, he may (if not interested) be permitted to testify. *Warren v. Merry*, 3 Mass. 27.

2. The rule that a witness shall not be permitted to invalidate a security which he has put into circulation, and given credit to by his transfer, is confined to negotiable instruments indorsed and put into circulation in the usual course of business, and does not apply to a note overdue, or

otherwise dishonored. *Thayer v. Crossman*, 1 Met. 416; *Warren v. Merry*, 3 Mass. 27; *Churchill v. Suter*, 4 ib. 156; *Packard v. Richardson*, 7 ib. 122; *Looker v. Haynes*, 11 ib. 498; *Fox v. Whitney*, 16 ib. 118; *Barker v. Prentiss*, 6 ib. 430; *Parker v. Hanson*, 7 ib. 470; *Knight v. Putnam*, 3 Pick. 184; *Butler v. Damon*, 15 Mass. 223.

3. The payee of a note cannot be admitted as a witness to prove the note usurious, in an action by the indorsee against the maker. *Parker v. Lovejoy*, 3 Mass. 565; *Churchill v. Suter*, 4 Mass. 156.

4. The declarations of the payee made before the indorsement of the note were admitted to prove that it was obtained from the maker by fraud, when the note was overdue at the time of the indorsement. *Sylvester v. Crapo*, 15 Pick. 92.

5. The indorser of a note negotiated after it is overdue is a competent witness to prove that it was paid before it was negotiated. *American Bank v. Jenness*, 2 Met. 288; *Thayer v. Crossman*, 1 Met. 416.

6. The payee of a note, who had indorsed it without recourse, is a competent witness to prove an alteration subsequent to its execution. *Parker v. Hanson*, 7 Mass. 470.

7. Where the promisee has indorsed a note without recourse, he is a competent witness to prove the execution of the note in an action by the indorsee against the maker. *Rice v. Stearns*, 3 Mass. 225.

8. Where a bill was indorsed to A. B. as agent to collect it for the payees, and A. B. indorsed it to C, in trust for the plaintiffs, and without recourse to himself, A. B. was received as competent to prove the trust. *Barker v. Prentiss*, 6 Mass. 430.

9. One who executes a note as agent for another is a competent witness to prove his authority. *Rice v. Green*, 22 Pick. 158.

10. Where one gives a note as agent of a joint-stock company, of which he is a member, and a suit thereon is brought against the other members of the company, he is a competent witness to prove his authority as agent, and also to prove other facts necessary to support the action. *Tappan v. Bailey*, 4 Met. 529.

11. The indorser of a promissory note is not a competent witness to prove the handwriting of the maker, unless he has a release from the indorsee. *Barnes v. Ball*, 1 Mass. 73.

12. In an action by the holder of a bill of exchange against an indorser, a subsequent indorser is not a competent witness to charge the defendant without a release from the plaintiff. *Talbot v. Clark*, 8 Pick. 51.

13. The maker of a note is not an admissible witness for the indorser, without a release, nor if the note is an accommodation note. *Bird v. Cole*, 6 Met. 326; *Peirce v. Butler*, 14 Mass. 303.

14. But if released by the indorser, the maker is a competent witness for him. *Wheaton v. Wilmarth*, 13 Met. 422.

15. In an action by the indorsee against the maker of a note indorsed in blank, the indorser, although he may have released his claims upon the note, is not a competent witness to prove that it was pledged to the indorsee as collateral security for a debt less than its amount. *Knights v. Putnam*, 3 Pick. 183.

16. In an action by the indorsee of a negotiable note against the

maker,—the confession of the plaintiff that he was not interested in the note, except as collateral security for a small part of its amount, having been given in evidence,—it was *held*, that the declarations or admissions of the indorser could not be received to defeat the action. *Butler v. Damon*, 15 Mass. 223.

17. In an action by one who had pledged a promissory note payable to himself, against the pawnee, for not returning it, the defendant cannot introduce the testimony of the maker to prove that the maker told him that nothing was due to the payee on the note. *Thomas v. Waterman*, 7 Met. 227.

18. Where a sale of chattels is made by A, and he receives the purchaser's note for the price and negotiates it, or it is paid, and the chattels are afterwards attached as the property of A in an action of replevin brought by the purchaser against the attaching officer, A is not a competent witness to prove that the sale was in fraud of his creditors. *Bailey v. Foster*, 9 Pick. 139.

19. But if it be doubtful whether the note is negotiable or not, and if negotiable, whether it has been in fact assigned, or still remains in the hands of A, he is a competent witness. *Ibid*.

20. Where the drawer of a bill of exchange exhibited to the payee, at the time of drawing the bill, an absolute engagement on the part of the drawee to accept it, and at the same time communicated to him certain conditions to which the engagement was subject, it was held, in an action by the payee against the drawee, that the drawer was a competent witness to prove such communication. *Storer v. Logan*, 9 Mass. 55.

21. *It seems* that the drawer of a bill of exchange payable to his own order, and by him indorsed, is a competent witness in a suit brought by the indorsee against the acceptor. *Pacific Bank v. Mitchell*, 9 Met. 297.

22. In an action by the indorsee against the drawer of a bill of exchange, the acceptor is a competent witness to prove that he has not had in his hands any funds of the drawer. *Kinsley v. Robinson*, 21 Pick. 327.

23. In an action by the indorsee against the maker of a promissory note, the payee is a competent witness to prove the time of the indorsement. *Spring v. Lovett*, 11 Pick. 417.

24. In an action by an indorsee against one who signed a promissory note on the back thereof, the indorser is a competent witness to prove that the defendant signed the note at the same time with the promisor whose signature was on the face of the note. *Richardson v. Lincoln*, 5 Met. 201.

25. In an action by B against C, on a note made by A, payable to B, and indorsed at the time it is made by C, the declarations and admissions of A are not admissible against C, as A is himself a competent witness. *Baker v. Briggs*, 8 Pick. 122.

26. A note was made by a failing debtor, on which the plaintiff immediately made an attachment of the debtor's property. Part of the alleged consideration of the note was an acceptance made by the payee of an order drawn on him by the debtor in favor of another creditor. A subsequent attaching creditor being admitted to defend an action on the note

under the Stat. 1823, c. 142, it was *held*, that the plaintiff could not introduce evidence of his own declarations, made on the day the note was given, to show that the acceptance was given before the attachment was made. *Carter v. Gregory*, 8 Pick. 164.

27. The confession of one of two joint promisors is admissible as evidence against them both. *Martin v. Root*, 17 Mass. 222.

28. A subsequent declaration of the same party in his own favor cannot be used to impair the effect of the first, though made under oath, at the instance of the plaintiff, and used by the plaintiff in another trial. *Ibid*.

29. Where a note was signed by the defendant and one A, and A gave in renewal of it a note in which the defendant's name was forged, and a suit was brought on the last note, and the plaintiff gave in evidence declarations and admissions of the defendant, to show an adoption of the note and take it out of the statute of limitations, in one of which declarations the defendant spoke of the suit's having been commenced; it was *held*, that the service of the writ on the defendant did not raise a legal presumption that his declarations referred to the new note rather than the old one, without proof that he knew of the new note, or of the contents of the writ; that the burden was on the plaintiff to prove such knowledge; and that it was proper for the jury to determine, upon the whole evidence, to which of the notes the declarations and admissions referred. *Phillips v. Ford*, 9 Pick. 39.

30. In an action to recover the amount of a draft drawn on the plaintiff by partners, and accepted by him, the admissions of one of the partners, that the draft was accepted by the plaintiff for the accommodation of the firm, may be given in evidence to charge the other partner. *Gay v. Bowen*, 8 Met. 100; *Cady v. Shepherd*, 11 Pick. 400; *Bridge v. Gray*, 14 Pick. 55.

31. In an action against partners on a promissory note made by one of them in the name of the firm, the confessions of that partner are not admissible to prove the note a partnership transaction. *Tuttle v. Cooper*, 5 Pick. 414.

32. In a suit against surviving partners, to recover the amount of a note given by a deceased partner in his single name, his declarations that the transactions for which the note was given were for the partnership business, and that it was a company note, are not admissible in evidence, if there be no evidence *aliunde* that those transactions were for the partnership. *Ostrom v. Jacobs*, 9 Met. 454; *Tuttle v. Cooper*, 5 Pick. 414; *Robbins v. Willard*, 6 Pick. 464.

33. Nor is evidence admissible, in such suit, that one of the surviving partners, after the death of the partner who signed the note, recognized the note as one which the firm was bound to pay, and attempted to borrow money to pay it, and offered to take it up and give the note of the survivors in lieu of it, if it be not shown that this was known or consented to by the other survivor. *Ostrom v. Jacobs*, 9 Met. 454.

34. Where, in such suit, there is no evidence that the surviving partners, before the death of the other partner, had knowledge of, or gave consent to, his giving notes in his own name alone for the debts of the

firm; and there is evidence that he, when he gave such notes, charged the amount thereof against the firm, as cash; and also evidence that the plaintiff knew of the partnership, and made charges against the firm in other cases; the declarations of the deceased partner, when he borrowed the money for which the note was given, are not admissible in evidence against the survivors. *Ostrom v. Jacobs*, 9 Met. 454; *Green v. Tanner*, 8 Met. 411.

35. In an action by an indorsee against W. on two promissory notes, one of which was made by W. and indorsed by J., the other made by J. and indorsed by W., it appeared, that after the execution of the notes, but before their maturity, J. had failed, and assigned his property for the benefit of his creditors, and had been, in consequence thereof, released by W. from all liabilities to him. It was *held*, that J., who was offered as a witness by the plaintiff, was not incompetent, as being interested in the event of the suit; for he would still be liable to the plaintiff, whether the plaintiff recovered judgment against W. or not, and the judgment in this suit could not be given in evidence in an action against J. *Eastman v. Winship*, 14 Pick. 44.

36. The payee of a promissory note indorsed it, without consideration, to K., another creditor of the maker, to enable K. to sue both of their claims in one action, and K., having recovered judgment in such action, extended his execution on the land of the maker, and so became a trustee for the payee. In a subsequent action brought by K. to recover the land, it was *held*, that the declarations of the payee, made before the indorsement of the note, were admissible in evidence to defeat such extent. *Kendall v. Lawrence*, 22 Pick. 540.

37. A promissory note, signed by A as principal and by B and C as sureties, was made payable to the order of D, and placed in his hands for a special purpose, which was not effected. D afterwards, with the consent of A, but without the knowledge of B and C, indorsed the note to an officer, as security for property attached by him as the property of a corporation of which D was the treasurer and agent. *Held*, in a suit on the note, brought by the officer against A, B, and C, that D was a competent witness for the defendants. *Strong v. Buck*, 11 Met. 279.

38. A signed a promissory note with B, payable to D, for money lent by D to B and C, and B and C gave him a written promise of indemnification. A paid the note, and brought an action against B and C for money paid. C was never served with the writ, and it was *held*, that his deposition was admissible, B having released him. *Gibbs v. Bryant*, 1 Pick. 118.

39. In an action by an executor upon a promissory note due his testator, brought for the benefit of the residuary legatee, who had indemnified the executor against costs, it was *held*, that, as the executor was a party of record, he was not a competent witness for the defendant, although released by him. *Page v. Page*, 15 Pick. 368.

40. In the trial of an action brought by one of the makers of a note, who has paid it in full, to recover of the other a moiety of the amount so paid, the individuals for whose use the note was given and paid are competent witnesses for the plaintiff. *Packard v. Nye*, 2 Met. 47.

41. In an action against certain parties who had agreed to be interested, in certain specified proportions, in a voyage, upon several notes given by the agent of the parties for goods bought for the voyage, brought by one of the vendors, of one of which notes the plaintiff was payee, and of the others the indorsee, it was *held*, that the payees of such other notes were competent witnesses on the part of the defendants, and compellable to testify on the question whether, at the time when the notes were taken, the plaintiff and the other vendors had knowledge that other persons besides the agent were interested in the purchases of the goods. *French v. Price*, 24 Pick. 13.

42. The letters from an agent to his principal, and the answers of the principal written before and soon after the guaranties of two notes by the agent for the principal, and relating thereto, are admissible in evidence as part of the *res gestæ* against the guarantor; also the letters of the person whose notes were guaranteed to the principal and agent, and the letters of the principal to such person. *N. Eng. M. Ins. Co. v. DeWolf*, 8 Pick. 56.

43. In an action on a promissory note against principal and surety, the principal, after being defaulted, is a competent witness to disprove the surety's liability. *Chaffee v. Jones*, 19 Pick. 261.

44. In an action by the payee against one of the sureties on a note, the principal promisor, and also the other surety, are competent witnesses for the defendant, to prove that the sureties have been discharged by the plaintiff. *Greely v. Dow*, 2 Met. 176.

45. A promissory note was made by a firm, payable to A, B, and C, and a corporation, joint owners of a vessel; the promisees assigned the note to A towards his share of the earnings of the vessel; the corporation assigned all its property, under the insolvent law, for the benefit of all its creditors, one of which creditors was a bank. A suit against said firm was brought on said note in the name of all the promisees, for the benefit of A. *Held*, that a stockholder in the bank, which was a creditor of said corporation, was a competent witness for the plaintiffs. *Hathaway v. Crocker*, 7 Met. 262.

2. When a Note is Admissible in Evidence, and of what it is Evidence.

1. A promissory note may be given in evidence, on the money counts, in a suit by an indorsee against the promisor. *Goodwin v. Morse*, 9 Met. 278; *Moore v. Moore*, 9 Met. 417.

2. A note, though it does not purport to be for value received, is admissible in evidence to support a count for money had and received of the payee by the maker. *Townsend v. Derby*, 3 Met. 363; *Hemmenway v. Hicks*, 4 Pick. 500.

3. The plaintiff may give in evidence, under a count for money had and received, a promissory note due when the action was commenced, but which at the time he did not intend to include in the action. *Webster v. Randall*, 19 Pick. 13; *Adams Bank v. Anthony*, 18 Pick. 238; *Hodges v. Holland*, 16 Pick. 395.

4. A promissory note expressed in the following terms: "We, the

members of Company G, &c., jointly and severally agree to pay," &c.,—and signed by an individual, with the words "Treasurer for Company G" appended to his name,—does not, of itself, necessarily import that the signer is a member of the company; and therefore the mere production of such a note, on the trial of an action against the signer, without proof that he is a member of the company, is not sufficient evidence of that fact. *Kingman v. Kelsie*, 3 Cush. 339.

5. A promissory note may be given in evidence on the money counts, as well when the action is defended by subsequent attaching creditors as when it is defended by the original defendant. *Moore v. Moore*, 9 Met. 417.

6. A promissory note, given on condition that the payee will assign to the maker a mortgage of land, is admissible in evidence, under a count for money had and received, the condition having been performed. *Payson v. Whitcomb*, 15 Pick. 212; *Randall v. Rich*, 11 Mass. 494; *Floyd v. Day*, 3 Mass. 403.

7. The possession of a bill of exchange by the acceptor, after it has been in circulation, is *prima facie* evidence that it has been paid by him. *Baring v. Clark*, 19 Pick. 220.

8. When a promissory note, that has been negotiated, comes into the possession of one of the parties liable to pay it, such possession is *prima facie* evidence of payment by him, and he is to be treated as the *bona fide* holder, unless the contrary is made to appear. *McGee v. Prouty*, 9 Met. 547; *Baring v. Clark*, 19 Pick. 220; *Northampton Bank v. Pepoon*, 11 Mass. 288.

9. Where four notes, made by the same maker and indorsed by the defendant, were in the hands of the same holder, the defendant gave the holder an order for the payment of the notes out of property conveyed by the maker to assignees for the payment of the notes in full or proportionably, and the assignees made a payment, after all the notes had fallen due, which the holder applied to all the notes *pro rata*, instead of applying it wholly to the notes which first fell due, the defendant not having directed any mode of appropriation. It was *held*, that, in an action on two of the notes, the other two, with the indorsements thereon, were admissible in evidence to explain the appropriation of the money paid on the order. *Washington Bank v. Prescott*, 20 Pick. 339.

10. A plea of tender is not supported by proof of a tender of a promissory note due from the plaintiff to the defendant. *Cary v. Bancroft*, 14 Pick. 315.

11. Where an action brought upon a promissory note was tried upon the merits, and a verdict of judgment rendered against the plaintiff, and the note was given in evidence and then placed on the files of the court; in another action upon the same note by the same plaintiff against the same defendants, with one other defendant, it was *held*, that the plaintiff ought not to have permission to take the note from the files in order to use it as evidence in support of his second action. *French v. Neal*, 24 Pick. 55.

3. Signatures, — when necessary to prove them, and how proved.

1. An indorsee of a bill of exchange cannot maintain an action against the drawer, or acceptor, without proving the signature of the payee. *Blakely v. Grant*, 6 Mass. 386.

2. In an action by one as bearer, on a note payable to A or bearer, indorsed by A, it is not necessary for the plaintiff to prove the handwriting of the indorser. *Wilbour v. Turner*, 5 Pick. 525.

3. A promissory note, payable on demand, with the payee's name indorsed, was put into the hands of a broker, to raise money upon it, and one S. lent the money, but upon a verbal agreement that the broker should himself be responsible as guarantor, and should repay the money at short notice; the broker, on payment being demanded of him, applied to the maker, who said he could not then take up the note, but requested the broker to do so, which he did, and afterwards the broker negotiated the note to the plaintiff, in a settlement between himself and the plaintiff. In an action by the plaintiff against the maker, it was held, that the note was not admissible in evidence in support of the money counts, without proof of the signature of the payee. *Dana v. Underwood*, 19 Pick. 99.

4. Where the subscribing witness to a note was absent from the State, other evidence of the maker's signature was admitted without proving the handwriting of the witness. *Homer v. Wallis*, 11 Mass. 309.

5. The comparison of the contested signature of a party to a note with other writings proved to be genuine, is by the common law of this State proper evidence. *Ibid.*

6. Upon the question as to the genuineness of a signature, the opinion of a writing-master, professing to have skill in detecting forgeries, formed from a comparison of hands, without any actual knowledge of the handwriting of the person whose signature is in controversy, is competent evidence. *Moody v. Rowell*, 17 Pick. 490.

7. Also the opinion of such a witness, formed on a mere inspection of the controverted hand, whether it is a free, natural, and genuine hand, or a stiff, artificial, and imitated one. *Ibid.*

8. Upon the question as to the genuineness of a signature, the genuine signature of the same person to a paper not otherwise competent evidence in the case, is admissible to enable the court and jury, by a comparison of hands, to determine the question. *Ibid.*

9. Notwithstanding evidence of the promisor's acknowledgment of his signature to a note, he was permitted to introduce evidence of persons acquainted with his handwriting, that the signature was not genuine, and also to prove the same fact by signatures known to be his. *Hall v. Huse*, 10 Mass. 39.

10. A deposition in which the witness testified that a professed imitation of the handwriting of his father, who was a public officer, bore a strong resemblance to the genuine handwriting, was held to be admissible, notwithstanding it was objected, that the witness had not laid a foundation for such opinion, by stating that he had seen his father write; for if the party objecting had doubted whether the son was sufficiently acquainted with his father's handwriting, he should have interrogated him directly

as to his means of knowledge when the deposition was taken. *Moody v. Rowell*, 17 Pick. 490.

11. The deposition of a witness, out of the Commonwealth, was taken, under a commission from the court, to be used by the plaintiff in an action on a promissory note, and the interrogatory put by the plaintiff to the witness was, whether he signed his name as attesting witness to the note, and the answer of the witness was, that he had no recollection of seeing the note executed, or of signing his name thereto, as attesting witness, although he might have done so. *Held*, that, by a reasonable implication, it must be understood from the answer, that the attestation to the note was in the handwriting of the witness; but that if this were left doubtful in the answer, the plaintiff might introduce other evidence of the handwriting, both of the attesting witness to the note and of the promisor. *Walker v. Warfield*, 6 Met. 466.

4. *Of the Evidence to prove Presentment, Demand, and Notice.*

1. In an action against the indorsee of a note, evidence that he had said that the maker had told him that payment had been duly demanded, is not evidence of such demand. *Tower v. Durell*, 9 Mass. 332.

2. In an action against an indorser, proof of waiver of notice will support an allegation of actual notice. *Taunton Bank v. Richardson*, 5 Pick. 435.

3. But proof of due diligence will not sustain an allegation of actual notice. *Blakely v. Grant*, 6 Mass. 386. But see, as to this, *Shed v. Brett*, 1 Pick. 411.

4. Where the indorser of a note takes security from the maker before it is due, to indemnify himself against his liability as indorser, and after it is due receives from the maker the property for which the note was given, and thereupon promises to deliver up the note to him without further compensation, the taking back of the property and the promise to deliver up the note are evidence from which a jury may infer that the indorser has received due notice of non-payment by the maker. *Andrews v. Bond*, 3 Met. 434.

5. When a deponent, who testifies to the presentment of a bill of exchange to the acceptor, and a demand on him for payment, annexes to his deposition a copy of the bill thus presented, the deposition is competent evidence, in an action by the indorsee against the drawer, of the presentment and demand of such bill, and will be conclusive, unless the drawer shows a different bill of the same tenor. *Sabine v. Strong*, 6 Met. 271.

6. In an action on a note discounted by a bank, against an indorser conversant with the usage of such bank, an allegation of a presentment and demand on the maker is supported by evidence of a written demand being left at his place of business according to such usage. *City Bank v. Cutter*, 3 Pick. 414.

7. In an action upon a note payable at a bank, against the indorser, an averment of a presentment and demand of payment on the promisor is supported by evidence that the promisor had notice that the note was at

the bank on the day it became due, ready to be delivered up on payment. *North Bank v. Abbott*, 13 Pick. 465.

8. Evidence that the indorser of a note was frequently at a certain bank, transacting business there, and that he frequently took up notes there, was held sufficient proof of his being conversant with a usage of the bank to give notice to promisors to pay at the bank, instead of sending the notes to them and demanding payment. *Shove v. Wiley*, 18 Pick. 558.

9. Evidence of the usages of the banks of the place where the parties to a promissory note do business, in regard to notifying the parties, is admissible as evidence of the agreement of the parties. *Jones v. Fales*, 4 Mass. 245.

10. The usages of a bank at which the parties to a note are accustomed to do business, respecting the time of notice and demand on such notes, may be proved as evidence of the assent of the parties to such usages, and of their having waived their legal rights. *Blanchard v. Hilliard*, 11 Mass. 85.

11. The book of a messenger of a bank who was dead, in which, in the course of his duty, he entered memoranda of demands and notices to the promisors and indorsers upon notes left in the bank for collection, was received in evidence of a demand on the maker, and notice to the defendant as indorser, of a note so left for collection. *Welsh v. Barrett*, 15 Mass. 380.

12. A record book kept by a bank, in which a clerk regularly entered certificates of his having given notices to the makers and indorsers of promissory notes, taken in connection with the testimony of the clerk, that it was his practice to carry the notices himself to the residence or place of business of the parties, and that he has no doubt they were carried as usual in the case of a certain note mentioned in the book, though he has no recollection in relation to such note, is competent and sufficient evidence to prove that notices were so given in that particular case. *Shove v. Wiley*, 18 Pick. 558.

13. Where such clerk produced a printed form, in common use, and testified to his belief that the notices in question were in the same form, it was held to be competent and sufficient evidence of the fact. *Ibid.*

14. A book belonging to a bank, and labelled "Notices to Indorsers," in which the entries were in this form:—

"Discount Sept. 1.
A. B. . . . 100 . . . Lady. . . . House.
C. D. . . . 100 . . . on desk. . . . C. R.

Attest, E. F., Messenger,"—

not stating that A. B. was maker and C. D. indorser, nor that notice was given to the indorser after a demand on the maker, was held to be admissible in evidence to prove a demand on the maker and notice to the indorser of a note discounted at the bank, it being first testified, that it was the duty of E. F. as messenger to make a demand on the makers and give notice to the indorsers of notes held by the bank, and make the entries in the book, that the entries were in his handwriting, and that he was dead. *Washington Bank v. Prescott*, 20 Pick. 339.

15. In an action upon a promissory note which was discounted at a bank, it appeared that the messenger of the bank, whose duty it was to give notices of the non-payment of notes to the promisors and indorsers, and to enter their names, and the places to which notices were sent, in a book kept for that purpose, had absconded and left the State, and that, after diligent inquiries had been made for the purpose, it was found impossible to procure his testimony. It was *held*, that the book of the messenger was competent evidence to prove notice to the indorser. *North Bank v. Abbott*, 13 Pick. 465.

16. The entry in the messenger's book stated the amount of the note, the day when it fell due, and the names of the promisor and indorser, with a mark against their names indicating, as was testified by the cashier, that they had been notified. It was *held*, that this evidence was sufficient to authorize the jury to infer the fact of notice to the indorser. *Ibid*.

17. The testimony of the cashier of a bank, that a letter was received, either by a director of the bank, or by himself, and that they both had searched for it, and that it was probably lost when a fire happened at the bank, is not sufficient, without the affidavit of the director also, to let in parol evidence of its contents. *Taunton Bank v. Richardson*, 5 Pick. 435.

18. But if the cashier had further testified, that the letter was kept on the files of the bank, it seems that secondary evidence of its contents would have been admissible. *Ibid*.

19. The contents of a written notice to an indorser of a promissory note may be proved by parol, without giving notice to produce such writing. *Eagle Bank v. Chapin*, 3 Pick. 180.

5. *Of the Admissibility of Parol Evidence to affect the Construction of Notes, and the Liability of the Parties.*

1. Parol evidence is admissible, as between the original parties to a promissory note, to show a want of consideration, or that the transfer was upon trust, and not absolute, or an illegality or fraud in the transaction. *Stackpole v. Arnold*, 11 Mass. 27.

2. Parol evidence of the conversation of the parties, at the time a note is given in part payment, is admissible to show for what debt it was given. *Isley v. Jewett*, 2 Met. 168.

3. In an action between the original parties to a promissory note, evidence of an agreement originally by parol, but subsequently reduced to writing, varying its terms, may be admitted. *Lewis v. Gray*, 1 Mass. 297.

4. Where notes of a certain description, made after a certain day, had been declared void by statute, it was held competent for the makers of such notes, in an action brought against them on the notes, to prove that, though antedated, they were in fact made after the day. *Bayley v. Taber*, 5 Mass. 286.

5. Where one makes a promissory note as agent of another, it is necessary that it should appear upon the face of the note that he acts as agent

and if this does not so appear, it cannot be proved by other evidence. *Stackpole v. Arnold*, 11 Mass. 27.

6. A conveyed his property, in trust for his creditors, to five assignees, who appointed two of their number to transact the business of the trust. These two authorized A to act as their agent, and he gave a note "for the assignees." *Held*, in a suit against the two on the note, that parol evidence was admissible to show that they were intended as promisors, and not the five assignees. *Paige v. Stone*, 10 Met. 160.

7. The defendant having written his name on the back of a promissory note before it was delivered to the payee, and the promisee having written his name above the defendant's, for the purpose of negotiating the note, and having erased his name on receiving back the note from the indorsee, it was *held*, in an action by the promisee against the defendant, that the promisee might introduce parol evidence of the circumstances under which he had written and erased his name, showing that it was not his intention to change the character of the defendant as an original promisor into that of a second indorser. *Austin v. Boyd*, 24 Pick. 64.

8. In an action by the holder of a joint and several note signed by two makers by their individual names, against an officer, for levying the execution of a prior attaching creditor of one of the makers upon an undivided half of their joint property, to the exclusion of the execution of such holder, on whose behalf the officer had attached the same property, parol evidence was held to be admissible to show the existence of a partnership between the makers, and the time and manner of executing the articles of partnership and the note, and to prove that such note was given for the partnership account; and the officer having had notice of the claim of such holder, he was adjudged to be liable in such action, although it did not appear by the original writ or the execution issued in favor of the holder against the makers of such note, that the makers were in partnership. *Trowbridge v. Cushman*, 24 Pick. 310.

9. Where a note was given by a son for money received by him of his father, it was *held*, under Rev. Stat. c. 61, § 9, that oral testimony was not admissible to prove that the money so received was an advancement. *Barton v. Rice*, 22 Pick. 508.

10. In an action by the plaintiff as indorsee upon certain promissory notes indorsed by the promisee in blank and delivered to the plaintiff's mother, with intent to transfer the legal interest, and delivered to the plaintiff by his mother, a writing was produced in evidence, given by the plaintiff to his mother, in which he acknowledges to have received the notes in question, signed by the defendant and indorsed by the promisee, and says, "Said notes I am to collect, and after said notes are paid by the promisor to me, I will account to her for the same, or deliver the notes to her, if I cannot recover them of the promisor." It was *held*, that by the legal construction of this writing it did not necessarily import that the plaintiff received the notes merely as agent to collect them in the name of his mother, and not as indorsee; and that it might be explained by parol evidence; for as it was collateral to the contracts upon which the action was brought, it did not fall within the rule, that parol evidence is

not admissible in aid of the construction of a written instrument. *Badger v. Jones*, 12 Pick. 371.

11. Parol evidence is not admissible to prove a substitution by parol of a collateral and conditional contract for an absolute contract in writing. *Hunt v. Adams*, 7 Mass. 518.

12. In an action on a note that is made payable absolutely, evidence is not admissible to prove an oral agreement, when the note was given, that it should not be payable unless the promisor should have certain funds in his hands. *Adams v. Wilson*, 12 Met. 138.

13. Where one had given his promissory note for the amount of his subscription to increase the ministerial fund of a religious society, it was held, that parol evidence that such notes were given upon the condition that the principal should not be called for so long as the interest continued to be punctually paid, was admissible. *Trustees, &c. in Hanson v. Stetson*, 5 Pick. 506.

14. Where the words, "one half payable in twelve months, the balance in twenty-four months," were written at the bottom of a promissory note on demand, it was held, that either party might introduce evidence to show at what time, by whom, and under what circumstances, the memorandum was affixed to the note. *Heywood v. Perrin*, 10 Pick. 228.

15. But the memorandum being proved to have been affixed to the note before it was delivered to the promisee, and so constituting a part of the contract, it was held, that parol evidence was not admissible to show that the stipulation for credit was provisional, and on condition that the promisor should remain solvent. *Ibid.*

16. In an action by the payee against a surety on a promissory note payable in five months, at which time the principal was able to pay it, but had become insolvent before the action was commenced, the defendant cannot give in evidence the plaintiff's admission that the defendant refused to sign the note, unless the plaintiff would agree that he should not be held if the plaintiff should not sue the note as soon as it was payable, and that the plaintiff agreed to sue it at that time. *Hanchet v. Birge*, 12 Met. 545.

17. In a suit by the payee against the maker of a promissory note, made payable absolutely, the defendant cannot give evidence, in defence, that he took property of the plaintiff, at his request, to sell and dispose of as if it were his own, and sold it to A, and took A's note therefor, which note he had not collected, and could not collect; and that he gave to the plaintiff the note in suit, upon an oral agreement between him and the plaintiff, that said note was not to be paid unless the defendant should collect A's note; such evidence is not admissible to prove that a condition was annexed to the payment of the note, and has no tendency to show want or failure of consideration. *Underwood v. Simmons*, 12 Met. 275.

18. In an action by the payee against the maker of a negotiable note, in the common form, the defendant cannot give in evidence, by way of defence, a parol agreement, that, upon his giving a deed of real estate to the plaintiff, the note should be given up. *Spring v. Lovett*, 11 Pick. 417.

19. A borrowed money of an insurance company, and gave an unconditional promissory note therefor, payable in twelve months, to the

order of B, who at the same time indorsed it to the company for the accommodation of A. *Held*, in a suit on the note, brought by the company against B, that he could not give in evidence, by way of defence, an oral agreement between himself, the company, and A, made when the note was given and indorsed, that such sum as should be found justly due from the company to A, on a certain policy of insurance made by them to him, should be set off and applied in or towards the satisfaction of the note. *St. Louis Perpetual Ins. Co. v. Homer*, 9 Met. 39.

20. In an action on a promissory note against the promisor, it was *held*, that parol evidence was admissible to show that when the note was given he had made an assignment of all his property, to be divided, ratably, among such of his creditors as should become parties thereto, and thereby discharge him from all their claims against him; and that the note was given to induce the plaintiff to become a party to the assignment, and was post-dated; and that when it was given, it was agreed between the parties, that it should stand as security for the difference between the amount of the plaintiff's claim against the defendant and the amount which he should receive under the assignment, and that only such part of the note should be paid as the assigned property should be insufficient to pay. *Case v. Gerrish*, 15 Pick. 49.

21. In an action by H. against R., for money had and received, H. gave in evidence a due bill signed by R. of this tenor: "Due H. 3314 pounds of hay, at my barn, on demand"; and also gave in evidence, to prove the consideration of said due bill, a receipt, of a previous date, signed by R., in these words: "Received of H. \$150, in full for contract for fifteen tons of hay; the hay to be delivered to order, or, if sold, to be accounted for with H." H. also gave evidence, that he had received part of the hay mentioned in the receipt, and that, when the due bill was given, there was due to him the quantity of hay therein mentioned, which he had demanded of R., and which R. had refused to deliver. *Held*, that R. might give parol evidence that, before he gave the receipt to H., H. agreed with him for the purchase of more than fifteen tons of hay, at ten dollars per ton, and that when the receipt was given, R. agreed not to require H. to take more than fifteen tons, if H. would then pay \$150; that H. then paid R. that sum, and took the receipt; that H. was to take the hay at R.'s barn, and R. was to sell the hay as he might have opportunity; that H. took part of the hay, and R. sold a part of it, and accounted for the proceeds with H.; that when the due bill was given, the quantity of hay therein mentioned remained in R.'s barn, and R. requested H. to take it away; that H. thereupon requested R. to take it, and R. did so, and gave the due bill therefor. *Held*, also, that on proof of these facts H. could not maintain his action for money had and received. *Hill v. Rewee*, 11 Met. 268.

22. In an action against the maker of a promissory note, payable upon the death of a widow, brought by the administrator of the payee, it was *held*, that parol evidence was admissible to prove that the note was given upon an agreement previously made between the defendant and the payee, that, if the estimated value of one third of the land of which the widow was dowable should be expended by the defendant in her support

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the note should be void ; that the promisee had declared, in a conversation in relation to this note, subsequently to its execution, and in the absence of the defendant, that the interest, and the principal also, if required, were to be expended in support of the widow, and that the note was dead ; and that, upon the death of the widow, the expense of her support by the defendant had exceeded the value of one third of the land. *Crossman v. Fuller*, 17 Pick. 171.

23. In an action on a promissory note, against a surety, it appeared that, just before the execution of the note, the principal and the plaintiff conversed together in relation to the agreement in pursuance of which the note was alleged to have been given, but that the defendant was not present during such conversation ; that the defendant hesitated or refused to sign the note, until the plaintiff stated what the agreement was, and that he then signed it. It was *held*, that such portion of the conversation as took place in the absence of the defendant was inadmissible in evidence on the part of the plaintiff. *Dexter v. Clemens*, 17 Pick. 175.

24. In an action against the surety upon a promissory note, it appeared that, the plaintiff having sold a horse to the principal, a small note was executed by the principal, and the note in suit was executed, together with a bond, by the principal and surety, the bond being conditioned that the principal should not redeem certain real estate then in the possession of D., whose title would thereby be rendered indefeasible ; and the defendant contended that the plaintiff was to derive some advantage through D. from the neglect to redeem the estate, and that the small note and the bond were the whole consideration for the sale of the horse, and that the note in suit was without consideration. It was *held*, that the fact that an agreement had been made at the time between D. and the plaintiff to pay the plaintiff something if the estate should not be redeemed, was material towards establishing the defence, and therefore the testimony of D. that no such agreement was made was admissible in evidence on the part of the plaintiff. *Ibid.*

6. *When Secondary Evidence of the Contents of a Note, &c. is admissible.*

1. In an action by two co-executors, upon a promissory note made to their testator, the affidavit of both the executors, dated Feb. 14, 1832, was filed in court, alleging that they had never had the note in their possession. Another affidavit of one of the executors, dated Nov. 22, 1832, was read to the court, which alleged that the other executor had had very little to do with the settling of the estate, and was out of the country ; that after the death of the testator, the deponent had sent for a trunk belonging to the testator, which he had understood was in the hands of the defendant ; that he received the trunk without the key, which the defendant said was not in his possession ; that deponent had opened the trunk and looked over the papers therein carefully, and that he had searched diligently among the papers of the testator, but that no such note had come to his knowledge or into his possession. This was held to be sufficient presumptive evidence of the loss of the note to let in evidence of its contents. *Page v. Page*, 15 Pick. 368.

2. The jury were also instructed that this affidavit was such evidence of the loss of the note as to let in secondary proof of its contents, and that if the jury were of opinion, upon the whole evidence, that the note was not paid to the testator in his lifetime, but remained in the hands and custody of the defendant, at the time of the testator's decease, this would be sufficient to rebut the presumption of payment arising from the non-production of the note by the plaintiffs. It was *held*, that the instructions were unexceptionable. *Ibid*.

3. The question, whether the loss of a promissory note has been sufficiently proved to entitle the plaintiff to introduce secondary evidence of its contents, is to be determined by the court, and not by the jury. *Ibid*.

4. A accepted a draft drawn on him by two partners, and they procured from a bank a discount of the acceptances, by presenting a copy thereof, which the officers of the bank supposed to be the original. The partners soon after failed, and assigned to the bank all their dues, demands, &c., and delivered to the bank a trunk of papers; but the acceptance was not among them. One of the partners was soon after committed to the State prison, where he died unmarried in about three years, leaving no papers there, and no administration was taken on his estate. The other partner, soon after the failure of the firm, absconded, leaving his wife, and went to New York, where he resided three or four years, and then went to parts unknown, and was never again heard of. In about five years and a half after the acceptance was payable, the bank commenced an action against A, in the name of the surviving partner, to recover the amount of the acceptance; and, in order to introduce secondary evidence of the contents thereof, first gave evidence that inquiry had been made of the near relations of the partners, who said that the original was not and never had been in their possession; that it was not among the papers of the firm which were left by the surviving partner with his wife and with his attorney; but that there was, among the papers so left, the account of sales, signed by A, for the balance of which the acceptance was given, as was noted on the margin of said account. *Held*, that this evidence was sufficient to warrant the introduction of secondary evidence of the acceptance. *Foster v. Mackay*, 7 Met. 531.

7. Burden of Proof.

1. Where by statute promissory notes of a certain description issued after a certain day were made void, it is incumbent on the defendant, in an action on certain notes bearing date before the day, to prove that they were issued after it, and not on the plaintiff to prove that he received them before the day. *Bayley v. Taber*, 6 Mass. 452.

2. In an action by the indorsee against the maker of a negotiable note, the burden is on the defendant to prove that the note was negotiated after it was due and dishonored; and that burden is not removed by proof that the note was transferred and delivered to the plaintiff before it was dishonored, but was not indorsed until afterwards. *Ranger v. Cary*, 1 Met. 369.

3. In a suit by the payee against the maker, on a promissory note given in consideration of a promise to forbear to sue a third person for six months, the burden of proof is not on the payee to show that he has forborne according to his promise, but on the maker to show that he has not. *Jennison v. Stafford*, 1 Cush. 168.

4. In an action against the indorser of a note by an indorsee, who received it of the maker, the burden of proof, as to facts set up in avoidance of the note, is on the defendant, although he was apprised, when he received the note, that the defendant indorsed it merely for the maker's accommodation. *Lincoln v. Stevens*, 7 Met. 529.

5. In an action upon a promise to pay a sum of money, in such iron castings as the plaintiff might wish, he furnishing his own patterns in case the defendant should not have such as the plaintiff might want, and the plaintiff having requested that the castings should be made on a basket belonging to the defendant, the burden of proof was on them to show that the basket was not a pattern. *Perry v. Botsford*, 5 Pick. 189.

6. Where a partnership is carried on in the name of an individual, the burden of proof, in an action on a note in common form signed by such individual, is on the holder, to show that it was given for the use of the partnership. *Manufact. Bank v. Winship*, 5 Pick. 11.

7. Where one partner gives a note in the name of the firm for his private debt, the burden of proof is on the person taking such note, in an action against one who indorsed it without any consideration, to show that the indorsee knew the circumstances under which the note was made. *Chazournes v. Edwards*, 3 Pick. 5.

8. In an action against a firm as a party to a note or bill made or indorsed for the accommodation, or as surety of another, where the contract is the act of an individual partner, the burden of proof is on the plaintiff to show that such partner was authorized by the others so to bind the firm, or that they subsequently ratified his act. A precedent authority may be implied from the common course of business of the firm, or the previous course of dealing between the parties. A subsequent ratification may be inferred from the acts or omissions of the other partners after they know, or have the means of knowing, of the act of such individual partner. *Sweetser v. French*, 2 Cush. 310.

9. In assumpsit by the bearer of a note against the maker, the burden is on the defendant to show that a partial payment, not indorsed, was made before the transfer. *Wilbour v. Turner*, 5 Pick. 525.

8. Evidence, in General.

1. It is competent for the defendant, in an action by the indorsee of a bill of exchange against the drawer, to prove that the plaintiff holds the bill merely as agent for the payees, and that they have ordered the drawer not to pay it. *Barker v. Prentiss*, 6 Mass. 430.

2. In an action upon a note payable to a single woman, brought by her husband and herself after marriage, it is incompetent for the defendant to prove the marriage unlawful, such matter being wholly in abatement. *Coombs v. Williams*, 15 Mass. 243

THE LAW OF BILLS OF EXCHANGE,

AN APPENDIX TO

THE MANUAL FOR NOTARIES PUBLIC.

1. WHAT IS A BILL? 2. BILLS AND NOTES ACCEPTED AND MADE BY AGENTS. 3. TIME OF PRESENTMENT. 4. EXCUSES FOR DUE PRESENTMENT. 5. PAROL ACCEPTANCE. 6. DESTRUCTION OF A BILL. 7. STATUTES AS TO ACCEPTANCE. 8. ACCEPTANCE OF A NON-EXISTING BILL. 9. ERASURE OF AN ACCEPTANCE. 10. WAIVER OF ACCEPTANCE. 11. CONDITIONAL ACCEPTANCE. 12. RIGHTS OF AN ACCEPTOR, SUPRA PROTEST. 13. WHAT IS A PROMISSORY NOTE? 14. NOTES PAYABLE TO A FICTITIOUS PERSON. 15. WHERE IS THE PLACE OF PAYMENT? 16. BANK CHECKS. 17. DAYS OF GRACE ON SIGHT BILLS. 18. CIRCUMSTANCES TO EXCUSE PRESENTMENT. 19. PRESENTMENT—BY WHOM TO BE MADE. 20. MODE OF PRESENTMENT. 21. MODE OF DEMAND. 22. EXCEPTIONS TO DEMAND. 23. WAIVER OF PROTEST. 24. PROTEST OF FOREIGN BILLS. 25. LEX LOCI. 26. NOTICE TO ENDORSERS IN THE SAME TOWN. 27. WHEN NOTICE TO BE GIVEN. 28. NOTICE TO NON-RESIDENTS. 29. AN ENDORSEE BOUND TO GIVE NOTICE. 30. NOTICE BY SPECIAL MESSENGER. 31. NOTICE TO JOINT ENDORSERS. 32. DEATH OF ENDORSER. 33. ACCEPTOR, SUPRA PROTEST. 34. TO WHAT PLACE SHOULD NOTICE BE SENT. 35. DECISIONS IN NEW YORK. 36. PERSONS BY WHOM NOTICE IS GIVEN. 37. NOTICE TO AN AGENT.

1. *What is a Bill?*

In a case reported in 26 Vermont, (3 Deane,) 345, an order in these words, "The Treasurer of the town of W. is directed to pay to F. or bearer \$10, on demand. January 17, 1851," was held to be a valid bill of exchange. So, too, in 1 E. D. Smith, (N. Y.) 1, the omission of the name of the drawee was held not to vitiate a bill, as the acceptance supplied the defect, and was an admission that he is the person meant. But in the case of *Peto v. Reynolds*, 26 Eng. Law and Equity Rep. 404, an instrument in these words "Cameroons, September 3d, 1852. Exchange for £200. At sight of this, my third of exchange, the first and second, of the same tenor and date, being unpaid, please to pay A. B., or order, the sum of £200 for value received, and place the same, &c., to the account of C. Accepted, D. Bristol," was held not to be a bill of exchange, as it had no drawee. Nevertheless, the court said, "if it were shown that D., whose name was written across the instrument, had promised to pay the amount, and so ratified the act of the drawer, he would be liable on that promise.

In 12 Eng. Law and Equity Rep. 424, the instrument sued upon ran as follows, viz.: "Two months after date, I promise to pay to A., or order, £50 for value received." It was signed by B., directed to C., and across its face was written, "Accepted, payable at O., bankers, London, C." The court held the writing to be a bill of exchange. (See Manual, pp. 34, 35.)

2. Bills and Notes Accepted and Made by Agents.

H. signed a note with his own name, adding "Agent of the Churchman." It was held, that he was personally liable, although the Churchman was a business name of a person whom H. had power to bind by that name. (*De Witt v. Walton*, Selden's Notes of Decisions in Court of Appeals, April, 1854. But see *Babcock v. Beman*.)

3. Time of Presentment.

The following abstract of cases may be of service in determining what is a *reasonable time*, within the meaning of the text:

Where a creditor received from his debtor an order on a third person for the amount of his debt, dated the 9th of December, 1804, and which the drawee agreed to pay in ten or fifteen days, and the order was not presented until March, and in the mean time the drawee failed; it was held that the holder had not used due diligence to get the money, and that the loss ought to fall upon him. (*Brower v. Jones*, 3 Johns. 229.)

A bill of exchange was drawn in the city of New York, on the 12th day of December, 1822, payable at three days' sight, to be borne by the payee, who was then in New York, to Richmond, in Virginia, where the drawees resided; but owing to the ill health of the bearer, the bill was not presented for acceptance until the 10th day of January, 1823. It was held, that the delay in presentment was not unreasonable. (*Aymar v. Beers*, 7 Cowen, 705. See Manual, p. 41.)

4. Excuses for Due Presentment.

The sudden illness or death of the holder, or of his agent intrusted with the presentment, or any other accident or casualty, or the operation of superior force, or political events or war, the holder will be excused if he make a presentment afterwards, so soon as he reasonably can. Or if the holder, without any fault on his part, be at a great distance from the acceptor, so that it is impossible to make a due presentment on his part, the holder will be excused from making presentment at the proper time. So, too, if the drawer has no funds in the hands of the acceptor, and had no right to expect an acceptance, no presentment need be made to bind the drawer; and, generally, any party to the bill or note can waive any negligence on the part of the holder. (Story on Bills, § 327. See Manual, pp. 41, 42.)

5. Parol Acceptance of Bills.

The rule would seem to be, both in this country and in England, that acceptance is implied when the drawee not only detains the bill, but from the *whole of his conduct* leads the holder to believe that he considers it accepted. (Chitty on Bills, part 1, chap. 7, sec. 2. See Manual, pp. 43, 44.)

6. Will the Destruction of a Bill by the Drawee Amount to an Acceptance?

It has been supposed that the drawee's destroying a bill may amount to an implied acceptance; and in the case of *Jeune v. Ward*, 1 Barn.

& Ald. 653, two judges were of that opinion, but the other two thought that the destruction of the bill was no acceptance; and a doubt was expressed by the latter, whether in any case destruction would do more than subject the party to an action of trover. It has been decided that if there has been a refusal to accept, and the holder submit to that refusal, but omit to take the bill away, a subsequent destruction of it by the drawee is not necessarily an acceptance. It is not easy to see how the wrongful act of destroying a bill, which is calculated to defeat the remedy on the bill, should be deemed evidence of a contract on the part of the drawee to pay the bill to the holder. (*Chitty on Bills*, part 1, chap. 7, sec. 2. See *Manual*, p. 45.)

7. Statutes Relating to Acceptances.

By Stat. 1 and 2, Geo. 4, chap. 8, no acceptance of any inland bill of exchange is sufficient to charge any person, unless such acceptance be in writing on the bill. This statute, and that of New York, referred to in the text, have been followed in Georgia and Missouri. (See *Manual*, p. 45.)

8. Acceptance of a Non-existing Bill.

The written promise must describe the bill to be drawn in terms not to be mistaken, so as to identify and distinguish it from all others; the bill should be drawn within a reasonable time after the paper was written, and it should be received upon the faith of the promised acceptance. If either of these circumstances fail, the promise will not amount to an acceptance. Where the writing containing the promise has no reference to the particular bill to be drawn, but is a general authority to draw at any time, and to any amount, against property to be shipped, the writer cannot be held as an acceptor of a bill drawn under it. The writing, however, may be regarded as a promise to accept the bill, and the writer may be sued on such a promise, by any person who may have taken the bill on the credit of the promise. (*Story on Bills*, § 249. *Cassell v. Davis*, 1 Blatch. Circuit Court R. 335. See *Manual*, p. 47.)

9. Erasure of an Acceptance.

The law was formerly otherwise, and the proposition in the text is to be understood with this limitation, laid down by Justice Story, (*Bills*, § 252;) that the holder has not, subsequent to the acceptance, with the knowledge of the acceptor, passed it to another person for value, who should take it upon the faith of an acceptance, with the consent of the acceptor. (See *Manual*, p. 47.)

10. Waiver of Acceptance.

Although an acceptance, when made and delivered, is irrevocable, it may be waived by an agreement or consent, expressed or implied, between the holder and the acceptor. And this waiver will discharge all the other parties to the bill, unless their consent to the waiver is obtained. Cases of express waiver may easily be suggested, as where the

holder agrees to consider an acceptance at an end, or informs the acceptor that he has settled the bill with the drawer, and he need give himself no further trouble. The receipt, by the holder, of the very consideration which, between himself and the acceptor, constituted the ground of the acceptance, will also operate as an implied waiver of the acceptance. So, an agreement to enlarge the time for the payment of the bill is an implied waiver of the right to require payment, except at the enlarged time. But generally, nothing but an actual payment or discharge will exonerate the acceptor, and length of time, at least if short of the statute of limitations, will be no discharge. (Story on Bills, § 252.) In *Ellis v. Calinda*, cited in 1 Doug. Rep. 250, an action was brought by the payee of a bill against the acceptor. The drawer and acceptor were brothers. When the bill became due, the payee received of the drawer a part of the amount for which the bill was drawn, and at the same time the following endorsement, signed by the drawer, was made on the bill, viz.: "Received, on account of this bill, £20. Balance remaining, £50. I promise to pay to A., within three months from the date of this." This balance was never paid, and at the end of three years, this action was brought against the acceptor. At the trial, Lord Mansfield thought the acceptor discharged, and on a motion for a new trial, the ruling was sustained. (See Manual, p. 47.)

11. Conditional Acceptance.

"If a man purpose," says Justice Bailey, in his Treatise on Bills, ch. 8, § 6, "making a conditional acceptance only, and commit that acceptance to writing, he should be careful to express the conditions therein, for it may be at least doubted, whether parol evidence of such conditions would be admissible; if it were, the burden of proving would be upon the acceptor, and the proof would be of no avail, if the holder, or any person under whom he claims, took the bill without notice of such conditions, and gave a valuable consideration for it." (See Manual, p. 48.)

12. Rights of an Acceptor *Supra Protest*.

An acceptor, *supra protest*, upon giving proper notice and a due payment of the bill, has his recourse against the person or persons for whose honor he accepted the same, and against all other parties to the bill who are liable to the same person or persons. (Story on Bills, § 124. See Manual, p. 50.)

13. What is a Promissory Note?

An instrument in these words, "Due to S. G., \$1,000, to be paid as wanted for his support; if no part is wanted it is not to be paid," is not a promissory note. (*Gordon v. Rundlett*, 8 Foster, New Hamp. 435.)

An instrument in these words, "Nine months after date, I promise to pay to the secretary, for the time being, of the Indian Assurance Society, or order," is not a note, the promise to pay being a contingent promise, the performance of which has to be made to a person to be ascertained, *ex post facto*, namely, the secretary, when the instrument became due. (*Storm v. Sterling*, 28 Eng. Law and Eq. 105.) In Massachusetts however, it has been held, that an instrument payable

to the treasurer of a society, or his successor in office, is a promissory note, (provided it be unobjectionable in other respects,) and gives a right of action to him who is treasurer at the date of the note, or whosoever was his successor at the time the action was brought. (*Fisher v. Ellis*, 3 Pick. 322.) A promise to pay to the estate of A., deceased, is not a promissory note, for want of a payee. (*Lyons v. Marshall*, 11 Barb. 241.)

An instrument containing, in addition to a promise to pay money, these words, "I am to insure one span of colts from my horse to A.'s mare, for ten dollars," is not a promissory note, inasmuch as it is not for the payment of money only. (*Austin v. Burns*, 16 Barb. 643.)

An instrument by which A. promises to pay money to "B., trustee of the A.— Land Company, or his successor in office, or order," is a valid promissory note. (*Davis v. Garr*, 2 Seld. 144.)

Simple as is the definition of a promissory note, given in the text, it is not easy in the conflict of cases to determine, always, when the instrument sued upon is or is not to be deemed a promissory note.

14. *Notes Payable to a Fictitious Person.*

"Notes made payable to the order of the maker, or of a fictitious person, shall, if negotiated by the maker, have the same effect and be of the same validity, as against the maker, and all persons having knowledge of the facts, as if payable to bearer." (Rev. Stat. New York, vol. ii. p. 53. See Manual, p. 56.)

15. *Where is the place of Payment?*

The place of payment is understood to be the place *where the drawee resides*, or where, on the face of the bill, it is addressed to him, unless some other is stated upon the face of the bill. If, therefore, the bill is meant to be made payable at any other place than that where the drawee resides, or where the address to him is, it should be so expressed on the face of the bill. But in general, unless otherwise required by some statute, the place of payment need not be expressly stated, but will be implied, in the absence of all controlling circumstances, to be the place of residence of the drawee, or where his address is on the face of the bill. Circumstances may, however, control this inference. Thus, if a bill were drawn upon a merchant abroad, addressed to him at Paris or London, the bill would be payable at the place where he accepted it, so a bill drawn upon a person who is on his travels abroad, if the address specifies no place, would be payable where he accepts the bill, or perhaps payable anywhere where he might be found when it becomes due. (Story on Bills, § 48. See Manual, p. 59.)

16. *Bank Checks.*

The case of *Bowen v. Newell*, referred to, p. 63, is reported in 4 Seld. p. 190, and again in 3 Kernan, p. 290, and overrules the *dicta* of the court in *Salter v. Bunt*, 20 Wend. 245. (See Manual, p. 63.)

17. *Days of Grace on Bills at Sight.*

The case of *Trask v. Martin*, cited in the text, p. 63, is reported in 1 E. D. Smith, 505, and seems to us decisive of the question. An ab-

abstract of the case may be useful to our readers. The court, by Justice Woodruff, lay down, in the first place, the following propositions. *First.* The words, "please pay at sight," or "ten days after date," or "on demand," all alike import a definite fixed time of payment; the *first* and the *last* named meaning at the precise time the bill is exhibited for that purpose, and the other meaning on the tenth or other designated day. *Second.* In the earliest history of days of grace, and from thence onward to the present day, they have been allowed upon bills payable after date, or after sight, or at a future day named. And as this allowance is founded upon custom, against the otherwise plain meaning of the contract, such allowance can be claimed only so far as the custom is shown or has been recognised. *Third.* Such usage does not embrace *all* bills of exchange. Bills payable on demand, for example, are well settled to be payable instantly on presentment. *Fourth.* Nothing, therefore, can be inferred respecting bills payable at *sight*, from the conceded fact, that bills payable *after* sight have days of grace, so long as it is no less clearly settled that bills payable on demand have no days of grace. On the contrary, if analogy furnished any guide, we should say that the terms, "at sight," no less decidedly indicated *on the very instant* than "on demand," and there would seem to be no more reason for allowing days of grace in the one case than in the other. *Fifth.* Unless, then, it is affirmatively settled by commercial usage, recognised in such wise that courts of justice can judicially declare it to be law, that bills at sight are entitled to day of grace, we must adhere to the plain import of the bill, and hold it payable on presentment for that purpose.

The court then demonstrate, by a critical examination of the authorities, that there are no decisions to be found directly establishing that days of grace are allowable upon sight bills; and that, therefore, the obvious meaning of the words, "pay at sight," must prevail, and the bill be held payable on presentment for that purpose. (See Manual, pp. 60, 63.)

18. *Excuses for Due Presentment for Payment.*

See note 8 to pp. 41 and 42, for a statement of the circumstances which will excuse due presentment. (See Manual, p. 68.)

19. *The Persons by whom the Presentment is to be Made.*

Presentment for payment must be made by the holder of the bill or note, or an agent competent to give a legal receipt for the money. Any person who happens to be the holder at the time a bill or note falls due, although he has no right to require payment for his own benefit, may and ought to demand payment, and give notice of the non-payment, so as to prevent loss. If it be doubtful whether the holder of a bill or note is legally entitled to it, as where he has received it from a person who has become bankrupt, and the assignees insist that it was delivered to the holder by way of fraud or preference, still he should present it duly for payment, and if it be dishonored, he should give notice thereof to all parties thereto. (See p. 40 of the text. See Manual, p. 68.)

20. *The Mode of Presentment and the Demand of Payment.*

If the presentment or demand should be personal or verbal, it should

be absolute and for present actual payment, and not with any offer or agreement for any further credit. If it be in writing, as may in some cases be proper, the writing should be expressly or by implication equally absolute and direct. Nor should any payment be accepted which is not an *immediate payment, and payment by a check or other draft upon a bank or bankers should be declined.* (Story on Bills, § 364.) Chitty, in his Treatise on Bills, chap. 9, says, "Although it has been decided that neither a holder, nor a banker acting as agent, is guilty of negligence by giving up a bill to the acceptor, upon his delivering to them a check upon another bank, that doctrine may now be questionable, and most of the London bankers, in presenting a bill for payment in the morning, leave a ticket where it lies due, declaring that in consequence of great injury having arisen from the non-payment of checks taken for bills, no draft can in future be received for bills, but that the parties may address them for payment to their bankers, or attach a draft to the bill when presented." (See Manual, p. 68.)

21. Mode of Making Demand if Bill or Note be lost.

In order to charge an endorser of a lost negotiable bill or note, the holder must tender an indemnity, both to the endorser and the maker at the time of the demand; and if the endorser sustain any injury by reason of the holder's neglect in this particular, it will be a good defence at the trial. (*Smith v. Rockwell*, 2 Hill, 482; 7 Barb. 143. See Manual, p. 67.)

22. Exceptions to the Rule requiring Protest.

In all cases of exception, the effect is strictly limited to the parties who have made such an agreement, or who stand in the peculiar predicament pointed out by the nature of the exception, and it does not extend to other parties to the bill or note. (Story on Bills, § 275. See Manual, pp. 70, 71.)

23. Waiver of Protest.

See p. 96 and note, for a fuller discussion of this subject. (See Manual, p. 71.)

24. Protest of Foreign Bills in the United States.

"It is a little difficult," says Kent's Comm. vol. ii. p. 95, "to know what is the true rule of the law-merchant in the United States on this point, after such contradictory decisions. The Scotch law is the same as the English, and it appears to me that the English rule is the better doctrine, and the most consistent with commercial policy. (See Manual, p. 71.)

25. Law of the Place of Contract.

In *Cook v. Litchfield*, (5 Sand. 330,) it was held, "The liability of an endorser of a promissory note or bill of exchange is governed by the law of the place where the endorsement is made, and by the endorsement we are to understand the contract itself, not the mere act of writing the name upon the back of the instrument. It matters not

when or where this may have taken place, since there is no endorsement, binding as a contract, until the note or bill is transferred to a third person, with the intent of enabling him to enforce its payment. The place of this effectual transfer is, therefore, the place of the contract, and the law which there prevails governs its construction." This case was affirmed in the Court of Appeals, in December, 1853. (See Manual, p. 71.)

26. Notice to Persons living in the same Town.

Notice must not be put in the post-office, if the endorser live in the same town. Proof, however, that the notice was actually received, would perhaps remedy this defect. (*Manchester Bank v. Fellows*, 8 Foster, New Hampshire, 302.)

In large commercial towns the uniform practice, says the court, in *Bell v. Hagerstown Bank*, (7 Gill. Maryland, 216,) now is, to reach the party to be affected with notice, through the post-office, when both reside within the limits of the penny postman, but it must be shown to have been put in in time to be delivered before the expiration of the day following the refusal. (See Manual, pp. 74, 75.)

This rule obtains in England, but it is too much to say that it has obtained universally in this country. The law is certainly otherwise in New York. (See *Cayuga County Bank v. Howard*, 5 Hill, 236; and *Hunt v. Maybee*, 3 Seld. 267.) It is worthy of consideration, whether, in our large cities, like New York and Philadelphia, it should not be established, either by statute or judicial decision, that, under proper limitations, notice of non-acceptance or non-payment may be sent through the United States penny post, to those who are sought to be charged by notice. As the law now is, notaries in these cities are compelled to spend a great deal of time and labor in serving their notices.

27. When Notice to be given.

Notice of protest should be given within *reasonable hours*. If given at the domicile or dwelling-house of the party, it should be at such an hour as that the family may be up; for if left after the usual hour of retirement, it will be too late. If given at the place of business of the party, as at his counting-house or store, it should be within the usual hours of business. For, in all cases of this sort, where the notice is to be given on a particular day, it should be given at such an hour that it may be reasonably received on the same day. (Story on Bills, § 291. See Manual, p. 76.)

28. Notice where Parties do not live in the same Town.

The statement of the text, that the holder of a bill is allowed the *whole* of the next day after dishonor in which to give notice, is, perhaps, a little too strong. "Where the parties do not reside in the same place," says Chitty, (Bills, chap. 10, p. 517, 8th ed.,) "and the notice is to be sent by the general post, then the holder or party, to give the notice, must take care to forward notice by the post of the next day after the dishonor, or after he received notice of such dishonor, *whether that post sets off from the place* where he is, early or late; and if there be no post

on such next day, then he must send notice by the very next post that occurs after that day." "It appears to me," says Story, (Bills, § 290, note 2,) "that the rule is *not so strict* as it is laid down in this passage of Mr. Chitty, and that it would be more correct to say, that the holder is entitled to one whole day to prepare his notice; and that, therefore, it will be sufficient if he sends it by the next post that goes after twenty-four hours from the time of dishonor. Thus, suppose the dishonor is at 4 o'clock, P. M., on Monday, and the post leaves on Tuesday at 9 or 10 o'clock, A. M., it seems to me that the holder need not send by that post, but may safely wait and put the notice into the post-office early enough to go by the post on Wednesday morning, at the same hour. I have seen no late cases which import a different doctrine; on the contrary, they appear to me to sustain it. But as I do not know of any direct authority which positively so decides, this remark is merely propounded for the consideration of the learned reader." This note was written in 1843; since which time the doctrine laid down in its last clauses has been affirmed in Ohio, Rhode Island and Arkansas. Where the mail closed at 10 o'clock, A. M., of the next day after dishonor, it was held, in *Lawson v. Farmers' Bank of Salem*, (1 Ohio, 206,) that notice need not be sent by that mail. "The holder of a bill," said the court, "must deposit the notice properly directed, in time to be sent by mail of the next day after dishonor, unless the mail of that day be made up and closed at an unreasonably early hour, or in other words, before early business hours; or if there be no mail of that day, or it be closed at unreasonably early hours, then by the next practicable mail." (See, also, *Mitchell v. Cross*, 2 Rhode Island, 437.)

The rule so laid down in Story, and the cases just cited, is undoubtedly the true one. But suppose that the mail, instead of leaving at 9 or 10, A. M., leaves at 4 o'clock, P. M., of the day next after the dishonor of the bill or note, ought not the holder to put the notice of dishonor into the post sufficiently early to go by this mail? In the absence of adjudication upon this question, it will be prudent for the holder to put his notice into the post-office in season for the afternoon mail.

In case no mail leaves in the afternoon of the day after dishonor, the notice must be put in the post in time to go by the next succeeding mail. Yet, if there be several modes of conveyance to the place to which notice is to be sent, the holder may choose the customary or most expeditious. Thus, where the dishonor of a bill took place on the 5th of November, and sailing vessels, carrying mails, sailed on the 7th, 10th and 17th, it was held, the holder was right in sending notice of dishonor by a steamer, also carrying a mail, which sailed on the 19th—it being probable that the steamer would arrive first, and letters being usually transmitted by it. (*Stainback v. Bank of Virginia*, 11 Grattan, Va. 200. See Manual, p. 76.)

29. *An Endorser bound necessarily to give Notice.*

It is prudent, *but not necessary*, for an endorser to give notice to those parties to the bill or note to whom he looks for re-imbursement. The notice will be sufficient, although not given by the holder or his agent, if it comes from some other person, who holds the bill or note when it

is dishonored, or who is a party to the bill or note, or who would, on the same being returned to him, and after paying it, be entitled to require re-imbursement thereof; for, under such circumstances, the notice will, in general, enure to the benefit of all the other parties to the bill or note, whether they are antecedent or subsequent parties thereon to the party who gives the notice. The doctrine, indeed, may now be stated in more general terms; and it may be laid down as universally true, that a party entitled as holder to sue upon the bill or note, may avail himself of the notice given in due time by any other party to it, against any other person upon the bill, who would be liable to him, if he, the holder, had himself given that person due notice of the dishonor. The doctrine of Lord Mansfield and of Lord Eldon was certainly the other way. But they were subsequently overruled, and the doctrine above stated finally established in England. The same doctrine has also been laid down in New York, Massachusetts and other States." (Story on Bills, § 304.)

30. *When Notice must be sent by a Special Messenger.*

In the case of *Fish v. Jackson*, (1 Appleton R. 467,) it was held, that if the person entitled to notice is living in the wilderness, twenty or thirty miles from any post-office, it is not sufficient to send notice to him by mail to the post-office nearest his residence, but that it should be sent by a special messenger, or given in person. (See Manual for Notaries, p. 78.)

31. *Notice to Joint Endorsers.*

It will certainly be prudent and advisable to give notice to each joint endorser, yet the authorities in the text differ. In Ohio the rule seems to be, that notice to one is notice to all. In Connecticut and New York, on the other hand, the rule is, that notice should be given severally to each joint endorser. (See Manual, p. 78.)

32. *Notice in Case of the Death of a Drawer or Endorser.*

The doctrine of the text was confirmed in the New-York Supreme Court. (12 Barb. 245.)

33. *Notice to and by an Acceptor, Supra Protest.*

In cases where there has been an acceptance, *supra protest*, the like demand of payment must be made of the original drawee at the maturity of the bill, and the like protest and notice of the dishonor by non-payment be given to the acceptor, *supra protest*, in like manner and under the like circumstances, as they are required to be given to the drawer or endorser, otherwise the acceptor will be discharged. And where upon such protest and notice the acceptor, *supra protest*, and he should give notice accordingly to those parties on the bill for whose honor he accepted it. If the acceptor, *supra protest*, refuses to pay the bill, then the holder should cause it again to be protested for such non-payment, and due notice thereof should be given to the parties interested, as in other cases. (Story on Bills, § 396. See Manual, p. 78.)

34. *To what place Notice must be sent.*

Where the endorser of a promissory note resides in a town in which

there are two post-offices, a notice of the dishonor of a note, addressed to him at the town, generally is sufficient *prima facie*, though liable to be rebutted by proof that he was accustomed to receive his letters at one of the offices only, and that the holder of the note might have ascertained that fact by reasonable inquiry. *Morton v. Westcott*, 8 Cush. (Mass.) 425.

The cases cited on pp. 79 and 80, of the text, to the effect that there is no presumption of law that the place where a bill is drawn is the place of the drawer's residence, does not seem to be law in England. In the case of *Burmester v. Barrow*, (9 Eng. Law and Eq. Rep. 402,) notice of the dishonor of a bill of exchange for non-payment by the acceptor, was sent by the holder to the drawer through the post, addressed "London," the bill itself being dated London. The drawer resided at Chelsea, and the notice never reached him; and it was stated in evidence, that had inquiry been made of the acceptors, whose address was given in the bill, the drawer's address might have been ascertained. The court held, that due diligence on the part of the holder sufficiently appeared, and therefore he was entitled to succeed on the issue of whether or not due notice of dishonor had been given. (See Manual, pp. 78, 79.)

35. Decisions in New York.

The following decisions have been recently rendered, and may be of service to our readers. In *Montgomery County Bank v. Marsh*, (11 Barb. 645,) an endorser resided in the town of A., in which town was a post-office, but received most of his letters at C., where his principal place of business was. The court held, that a notice of protest addressed to him at C., was good service, although his residence was nearer to the post-office in A. than to that in C. (See, also, 3 Seld. 481.)

In *Harris v. Husson*, (4 Sand. 93,) the defendant was the endorser of a promissory note. Annexed to his endorsement he had written "13 Chambers-street." At the time of the endorsement, he had an office in the city of New York, where he transacted his business and received his letters, but his residence, as also the maker's, was in Brooklyn. The note had been deposited by the holder in a bank at Brooklyn, for collection, and upon its dishonor, a notice of protest was put in the post-office at B., by a clerk of the bank, acting for the notary, and directed to the defendant, "No. 13 Chambers-street, New York." In an action against the defendant it was held, that the service of notice was sufficient.

It is sufficient *diligence*, where the endorser lives in New York city, to put a notice, directed to him at that city, if his name is not in the directory, and after a careful search, the person employed to give him notice, cannot ascertain either his place of business or residence. (*Hunt v. Maybee*, 3 Seld. 267.) There is force, however, in the suggestion of Justice Edmonds in this case, that inquiry as to the whereabouts of the endorser should be made of the maker.

Where the endorser of a note, held and payable in C., resided with his family there, but his place of residence was in New York, where he usually spent four days in the week, and received a portion of his letters,

it was held, that a notice of non-payment deposited in the post-office at C., addressed to him at New York, was not a good service. (*Van Vechten v. Pruyer*, 3 Kern. 549. See Manual, pp. 81, 82.)

36. *The Persons by whom Notice is to be Given.*

Notice of non-acceptance or of non-payment of a bill or note must, *in general*, come from the holder or his agent, and it will not be sufficient that it comes from a mere stranger to the instrument, however early and regular, in other respects, it may be. The reason is, that the notice is required to be given, not merely that the party to whom it is given may give notice to those who are liable to them for an indemnity upon receiving notice, but also to show that the holder intends to stand upon his legal rights, and to resort to the antecedent parties, to whom he gives notice, for payment. We say that, *in general*, the notice must come from the holder or his agent, and not from a mere stranger. This qualification to the rule, however, must be noticed. The notice will be sufficient, although not given by the holder or his agent, if it comes from some person who holds the bill or note when it is dishonored, or who is a party thereto, or who would, on the same being returned to him, and after paying it, be entitled to require reimbursement thereof; for under such circumstances, the notice will, in general, enure to the benefit of all the other parties to the bill, whether they are antecedent or subsequent parties thereon to the party who gives notice. (Story on Bills, § 304, and note 22 of this appendix. See Manual, p. 83.)

37. *Notice to an Agent, and his Liability.*

(1.) Is notice to a director of a bank notice to the bank itself? This question is involved in a good deal of doubt. "A nice question," says Story, (Agency, §§ 140-6,) "may arise, in cases where corporations act through the instrumentality of a board of directors, how far notice to one of the directors is to be deemed notice to all, and binding upon the corporation. Thus, for example, suppose in the case of a bank, one of the directors should have notice that a note offered for discount was void from extrinsic facts unknown to the other directors, and he should conceal those facts, and the note should be discounted by the board, the question would arise, whether notice to one director, and unknown to the others, was notice to and obligatory upon the corporation, so as to let in the proof as a defence against a suit on the note for non-payment. Upon this question it is not easy to affirm what is the prevailing rule, since the authorities are not entirely agreed. On the one hand, it has been thought reasonable that nothing but an official notice of the facts to the board, or to a majority of the board, acting as such in the particular instance, ought to bind the bank. On the other hand, it has been insisted that notice of the facts to any one of the directors, who act in the discount, (but not unless he acts,) is sufficient to bind the corporation, although the other directors at the board have no knowledge thereof. If we examine the subject upon general principles, and with reference to practical convenience in the administration of banks, it might seem that to bind the bank the notice ought to be given to the

proper agents of the bank, legally intrusted with the particular business to which the notice relates. If the business be legally confided to the cashier, notice to him ought to bind the bank." (See Manual, pp. 83, 84.)

(2.) *The Liability of Agents.*—The case of *Allen v. Merchants' Bank*, is reported in the 22d vol. of Wend. Rep. p. 215, and was followed in the case of the *Commercial Bank of Pennsylvania v. Union Bank of New York*, 1 Kernan, 203. In this case the Bank of Wilmington was the owner of a bill of exchange, payable at Troy, and endorsed and transmitted it to the Commercial Bank of Pennsylvania, under an arrangement by which the latter collected and transmitted the bill to the defendant, the Union Bank, its correspondent in New York, for collection, and the same was by the latter sent to the Troy City Bank for the same purpose. The Court of Appeals held, that the plaintiff could recover of the defendant the amount of the bill, if it were collected by the Troy City Bank, or if it were lost by the omission of the latter, to charge the drawer and endorsers.

The doctrine is thus established beyond question, in the State of New York, in the words of the resolution passed in the case of *Allen v. Merchants' Bank*, "that when a bank, broker or other money dealer receives, upon a good consideration, a note or bill for collection, in the place where such bank, broker or dealer carries on business, or at a distant place, the party receiving the same for collection is liable for the neglect or omission, or other misconduct of the bank or agent to whom the bill or note is sent, either in the negotiation, collection or paying over the money, by which the money is lost, or other injury sustained by the owner of the note or bill, unless there is some agreement to the contrary, express or implied."

The same doctrine had previously been laid down in England, in *Van Wart v. Wooley*, 3 Barn. & Cres. 439. A., resident in New York, employed B., resident at Birmingham, to purchase and ship goods for them. On account of such purchase they sent to B. a bill, drawn by C. in New York, on D., in London, but did not endorse it. B. employed his bankers to present the bill for acceptance, they charging him a commission for their trouble in the matter.

CHAPTER SECOND.

The following pages are designed to illustrate more fully the questions and points discussed in the early editions of the "Manual for Notaries Public," and to suggest additional topics of inquiry to those who wish to make themselves familiar with the law and practice in reference to negotiable paper. Should any points of inquiry be omitted in the volume, on which notaries would wish to be informed, the editor will take occasion to add these to a future edition. There are no more important questions to the banker and the notary than those in reference to the LAW OF AGENCY, (in the collection of paper,) and that in reference to forged signatures, forged bills and forged bank notes. These topics are fully discussed in this appendix.

NO. 38. THE LIABILITY OF AGENTS. 39. CAN A DEMAND BE MADE LEGALLY BY A NOTARY'S CLERK. 40. FORM OF NOTICE. 41. USE OF PRINTED SIGNATURES. 42. EXCUSES FOR WANT OF PRESENTMENT. 43. WAIVER OF NOTICE. 44. GUARANTY OF BILLS. 45. LOST BILLS. 46. FORGED BILLS AND NOTES. 47. DAYS OF GRACE ON CHECKS.

38. *The Liability of Agents*

THE liability of a bank to its customers for bills and notes collected, or sent for collection, through agents, has been fully established in New York, by the case of *Allen vs. Merchants' Bank*, (Wend. N. Y. Rep., vol. 22, p. 215,) and in the case of *Commercial Bank of Pennsylvania vs. Union Bank of New York*, (see Kern. N. Y. Rep., vol. 1, p. 203,) alluded to in the preceding chapter. The same doctrine has been established by the English courts, in the case of *Van Wart vs. Wooley*, (3 Barn. & Cres. p. 439.) A., residing in New York, employed B., residing at Birmingham, to purchase and ship goods to A. For such purchases bills were remitted to B., drawn by C. upon D., but not endorsed by A. B. employed his bankers to present the drafts for acceptance, they charging, as usual, a commission for their agency.

These bankers forwarded the bill to their correspondents in London. D. refused to accept, but of this the bankers of B. did not give notice until the day of payment, when it was again presented and dishonored. In an action brought by B. against his bankers for neglecting to give him notice of the non-acceptance of the bill, it was said: "Upon this state of facts it is evident that the defendants, (who cannot be distinguished from, but are answerable for, their London correspondents, Sir John Lubbock & Co.,) have been guilty of a neglect of the duty which they owed to the plaintiff, their employer, and from whom they received a pecuniary reward for their services. The plaintiff is, therefore, entitled to maintain his action against them, to the extent of any damages he may have sustained by their neglect."

The doctrine thus established in New York and in England, as will be seen from the text, is not the law of Massachusetts. It may be well to observe that the criticism in the case of *Warren Bank vs. Suffolk Bank*, upon the law as it exists in New York, does not seem to be well founded. It is not admitted by the courts of New York, that the collecting bank would not be chargeable for the default of a sub-agent, if there had been any understanding or agreement, express or implied, that the note was to be transmitted to a sub-agent for collection. Both in the case of *Allen vs. Merchants' Bank*, and of *Commercial Bank vs. Union Bank*, there was an implied agreement that the collecting bank should employ a sub-agent, yet the collecting bank was held liable.

The doctrine obtaining in Massachusetts, viz., "That where the nature of the business requires the employment of a sub-agent, the bank with which a bill or note is left for collection is not responsible for the neglect or default of such agent, also obtains in Connecticut. (*East Haddam Bank vs. Scovill*, 12 Conn. 303,) and perhaps, also, in the United States. (*Bank of Washington vs. Triplett*, 1 Peters, 25. See pp. 84 and 85 of Manual.)

39. *Presentment by Notary himself when necessary, and the Construction of the Notarial Certificate in New York.*

1. Revised Statutes of New York, (Vol. II. p. 382. See page 133 of the text,) "declare that in all actions at law, the certificate of the notary, under his hand and seal of office, of the presentment *by him* of any promissory note or bill of exchange for acceptance or payment, and of any protest of such bill or note for non-acceptance or non-payment, and of the service of notice thereof on any or all of the parties to such bill or note, &c., shall be presumptive evidence of the facts contained in such certificate." The construction put upon this statute in the text has been followed in several late cases. In *Hunt vs. Maybee*, 3 Seld. 267, the certificate of the notary stated that a notice of protest *was* served, &c., (without stating by whom it was served.) The court said: "The certificates of the notary in this case are void, as the presentment was not made by him, but his clerk. This cannot be delegated to a third person, as is settled in the case of the *Onondaga County Bank vs. Bate*. (See also, *Cole vs. Jessup*, 10 How. Prac. Rep. 519.)

In the further construction of this statute, the case of *Ketchum vs. Barber* (4 Hill, 235) deserves notice. Here the certificates stated that "notice of protest was served on A., by putting the same into the post-office, directed to him;" and the objection being taken that the certificates did not state that the notices were put into the post-office by the notary, the court, by Justice Cowen, held: "The Revised Statutes simply require a certificate of the service of notice. It is a sufficient compliance with the statute to say positively that the service was made, specifying the mode; such language imports that the notary made the service himself, or knew it was made. He need not state by whom the business was done." A certificate which states that the notary gave notice of the non-payment of the said bill of exchange to the drawer and endorser as follows, showing a due service by mail, it will be under-

stood to mean that the notice was of non-payment on due presentment of the bill for payment. (*Burbank vs. Beach*, 15 Barb. 326.)

2. In those cases in which a notary, in his official character as such, has a duty to perform, as in the protesting of foreign bills of exchange, he cannot employ a clerk to perform that duty. (See the extract from the Treatise of Kyd on Bills, at p. 69 of the text.) But where a notary is called upon to do what any private person may do with equal validity, he may employ a clerk to act for him as his agent. Thus he may employ his clerk to demand payment of a bill or note, unless some statute (as in New York, in certain cases) requires the demand to be made by him. (See p. 86 of the Manual.)

40. *Form of Notice.*

To the cases cited in the text we would add the following recently decided: 1. *As to the demand of payment.* The notice need not state that the endorser is looked to for payment, but must show on its face, either expressly or by fair inference, that the bill has been duly presented and dishonored. (*Townsend vs. Lorain Bank*, 2 Ohio, New Series, 345.)

The protest of a note stated that the notary, "at the request of the holders, presented at the Bank of the Metropolis (the drawer having removed from Washington, and having been previously informed at his late place of business that he had not left any funds or made any provision for his notes) the original note, and demanded payment thereof, which could not be obtained, as the drawer had not any money to his credit," &c.; and it being conceded that the demand at the bank was insufficient, the protest was held to be insufficient, also, because, 1. The court cannot infer that a demand was made from what the notary says was the information he received at the drawer's late place of business, whether he had the note there or had it with him, does not appear. 2. The word "previously" does not necessarily imply that it was made on the same day—plain and satisfactory proof of the time is necessary. The evidence must point not to a demand at some time, but must show that it was made on the day prescribed by law. (*Nailor vs. Bowie*, 3 Md. 251.)

A notice addressed to an endorser, informing him that the note in question had not been paid by the drawer, and that he, the endorser, would be held responsible for its payment, was held in Maryland insufficient, because it did not inform the endorser of a demand and refusal. (*Nailor vs. Bowie*, 3 Md. 251.)

In England the following has been held a good notice: "We beg to acquaint you with the non-payment of M.'s acceptance of L.'s draft of the 29th of December last at four months, amounting, with expenses, to £51, which remit us in course of post, without fail." (*Everard vs. Watson*, 18 Eng. Law and Eq. Rep. 104.)

In New York the following decisions have been recently rendered. A notice of protest in these words has been held good: "Take notice, that a promissory note made by A. for \$800, endorsed by you, was this day protested for non-payment, and that the holders look to you for the

payment thereof." (*Beals vs. Peck*, 12 Barb. 247. *Youngs vs. Lee*, 18 Id. 189. Same case, 2 Kernan, 551. *Cook vs. Litchfield*, 5 Sand. 320. Same case, Selden's Notes of Cases in Court of Appeals, December, 1853.) It is also held in these cases that the word "protest," when used in reference to commercial paper, imports a demand and refusal of payment.

2. *Description of the bill or note.*—In the cases we have just cited, it was determined that a description of a bill or note, in a notice of protest, is sufficiently definite which gives the amount, maker and endorser, even although it does not state the time of the maturity of the bill or note. But where there are several bills or notes to which a similar notice would apply, the notice is not sufficient. (See *Housatonic Bank vs. Loftin*, 5 Cush. 546.) A mistake in describing the note in a notice of protest, (as where the note was for \$200, but described as for \$175 and interest,) does not necessarily vitiate the notice; the question in such cases being whether the endorser was misled by the mistake. (*Snow vs. Perkins*, 2 Mich., Gibbs, 238.)

A notice sent by the endorser of a bill to the drawer, stating the amount of the bill correctly, but erroneously describing it as drawn by the acceptor and accepted by the drawer, was held in England a sufficient notice of dishonor. (*Mellersh vs. Rippen*, 11 Eng. Law and Eq. Rep. 599. See page 87 of Manual.) The case of *Cook vs. Litchfield*, is reported in 5 Sand. 320. (See preceding note, and page 93 of Manual.)

41. *Use of Printed Signatures by Notaries.*

It is the practice of some notaries to have their names printed at the bottom of the notices of non-payment they are in the habit of sending to endorsers. This is not a safe course to pursue, as a question might be raised by an endorser as to the sufficiency of such a notice. It is true that no valid objection seems to exist to this mode of giving notice, but a notary should always *act upon the safe side*. (See page 87 of Manual.)

42. *Excuses for want of Presentment, Protest or Notice of Dishonor.*

A bill of exchange was deposited by the holder in the post-office, in season to reach the place where it was payable before it fell due, by the regular course of the next mail, and there was no reason to believe that it would not be there duly delivered. It was actually sent by that mail, but by mistake of the postmaster, where it was mailed, the package containing it was misdirected, and in consequence thereof was carried beyond its place of destination. The mistake being discovered, the bill was returned, and reached the place where it was payable on the day after it fell due, which was Sunday. On the morning of the following day the bill was delivered from the post-office to the agent of the holder and payment demanded of the acceptor. It was held that the holder was not chargeable with a want of reasonable diligence, and could therefore recover against the endorser. (*Windham Bank vs. Norton*, 22 Conn. 213.)

In case of the *prevalence of a malignant fever or epidemic*, the authorities in the United States differ whether the holder may defer demand of payment or notice of dishonor, until the disease subsides. (Story, Bills, § 308, no. 1.) In New York, however, the question has been settled by an act of the legislature, for the provisions of which, see pages 130 and 131 of the text. (See Manual, page 95.)

43. Waiver of Notice.

1. The endorser of a bill or note may agree to dispense with demand of payment and notice of non-payment, and the agreement will be binding upon him. Thus, an agreement with the maker by the payee of a note, after the former had negotiated it, that he would pay it and take it up, amounts to a waiver of demand and notice, and such agreement enures to the benefit of the endorsee. (*Marshall vs. Mitchell*, 35 Maine, 5 Red. 221.)

One who endorses a promissory note, inserting over his signature a waiver of demand and notice, is not entitled to any demand and notice on its non-payment by the maker. (*Woodman vs. Thurston*, 8 Cush. 151.)

A notice being endorsed before maturity, the attorney of the endorsee reminded the endorser that it would soon be due, and that the maker had left the place; the endorser replied that he owed the note; that it was all right; that he had endorsed it to pay it, and that if he was not there to pay it when it became due, his agent, who had notes and accounts in his hands for collection, would do so. The court held this was sufficient evidence of waiver. (*Long vs. Young*, 8 Eng., 13 Ark. 401.)

2. The endorser may waive demand and notice by taking security from the maker.

A mortgage was given by the maker of a promissory note to the endorser, conditioned, that if the note was paid at maturity, the mortgage should be void. It did not appear whether the property so mortgaged was of sufficient value to afford an indemnity. The court held the taking of the mortgage no waiver of demand and notice. "The mere precaution," it was said, "by an endorser, of taking security from his principal, has never been held to dispense with demand and notice. There must be something more, such as the taking into his possession the funds or property of the principal, sufficient for the purpose of meeting the payment of the note, or he must have an assignment of all the property, real and personal, of the maker for that purpose." (*Seacord vs. Miller*, 3 Kernan, 58.) This doctrine obtains very generally in the United States.

3. If the endorser of a bill or note, after its maturity, with the knowledge that demand of payment has not been duly made, or notice of non-payment duly given, promise to pay it, he waives thereby the want of such demand or of such notice. The rule formerly was, that the clearest evidence of knowledge on the part of the endorser was necessary to sustain the waiver. But the rule is now otherwise. The knowledge may be inferred as a fact, from the circumstances attending the promise, without the need of clear and affirmative proof of knowledge. (*De Wolf vs. Murray*, 2 Sand. 166. See page 97 of Manual.)

44. Guaranty of Bills and Notes.

The following decisions have been recently rendered. In the case of *Baker vs. Scott*, (5 Rich. 303, S. C.) A. bought goods of the plaintiff, and being required to give security, made his promissory note payable to the order of the plaintiff; the defendant endorsed it in blank, and A. then delivered it to the plaintiff, who afterwards endorsed it also, putting his name above the defendant's. The court held that parol evidence was admissible to explain the circumstances under which the note was executed by A. and the defendant, and endorsed by the plaintiff; that the defendant was liable on the note as an *original maker or promissor*, and that the plaintiff, by afterwards endorsing the note, did not change its character or absolve the defendant.

So, too, in Missouri, it has been recently held, that one who puts his name on the back of a note to which he is not a party, whether it be negotiated or not, is liable as an original promissor or maker. (*Lewis vs. Harvey*, 3 Benn. 740; *Perry vs. Barret*, Id. 140.)

If a party puts his name upon the back of a note before its delivery to the payee, he is an original party; and the consideration for the note will be his consideration for his undertaking. (*Carroll vs. Weld*, 13 Ill. 682.)

In Michigan, it was held, in the case of *Wetherwax vs. Paine*, (2 Mich., Gibbs, 555,) that where one endorses a note at its maturity, and before delivering it to the payee, to enable the maker to buy with it certain property of the payee, he is a joint original promissor with the maker.

In Massachusetts, the law of that State was affirmed in *Bryant vs. Eastman*, (7 Cush. 111.) A debtor, in that case, sent a promissory note to his creditor in payment of his debt, by the hand of a third person, who, before delivering it, at the request of the creditor and for the purpose of giving credit to the note, put his own name on the back of it. It was held, that such third person was liable as an original promissor or maker. But, in 8 Cush. 85, it was said, that one who endorses a note several weeks after it is given, is not liable as an original promissor.

In New York, in *Griswold vs. Slocum*, (14 Barb. 644,) a note not negotiable was given by the maker to the plaintiff to secure a precedent debt, and the defendant, previous to its delivery, endorsed the same as security, and upon these facts, it was held that the defendant was not strictly an endorser, inasmuch as a legal endorsement can only be made upon a negotiable note, but that he was liable to the payee as maker or guarantor. "I think the law well settled," said the court, by Parker, J., "that under such circumstances the defendant may be held liable as maker or guarantor; unless he is thus liable he escapes all liability on his contract. His name is placed on the back of the note, but he is not strictly an endorser, because a legal endorser can only be made on a negotiable note. The distinction, in this respect, between paper negotiable and not negotiable, has been plainly recognised, and is now well established. All the conflict of authority has been in regard to negotiable paper. There has been none in regard to paper not negotiable." (See p. 98 of Manual.)

45. *Lost Bills or Notes.*

"In America," (says Story, Bills, § 449,) "there has been some diversity of judgment whether a suit is maintainable at law, upon a lost bill, against the acceptor or not; which doctrine will ultimately prevail here, it is not for me to conjecture. But it may be said with great confidence, that it will be difficult to overturn, upon satisfactory grounds, the reasoning of Lord Tenderden, in *Hansard vs. Robinson*, (7 Barn. & Cress. 90,) in favor of the negative. But when we come to the case of the endorser or drawer, who is called upon to pay the bill, in default of payment by the acceptor, it will be difficult to find any solid reason upon which the holder can be entitled to recover against either of them, without the bill being produced, upon the mere parol proof of the loss of it; since the endorser and drawer may or must thereby be put to great embarrassment in making out their own title against the acceptor, or against other parties liable to them, without the production of the bill. What right can the holder have to shift upon them the burden of proving the loss of the bill? Or what adequate means can they have of preserving and commanding all the proof for future use, in case of future litigation?" (See p. 103 of Manual.)

46. *Forged Bills and Notes. Liability of the Vendor of a Bill Forged, or Note to Refund to the Vendee money paid by the latter therefor.*

In a recent case, (*Rieman vs. Fisher*), decided in Maryland, the subject was thoroughly discussed, and the liability of the vendor maintained. Here A. brought an action against B. to recover a sum of money paid by the former to the latter upon the sale of a note, of which the signatures of the maker and one of the endorsers turned out to be forged. "The question is," said the court, "as to the liability of a public note or bill broker for the genuineness of a note or bill sold by him—he at the time being ignorant of the fact; in other words, both the plaintiff and the defendant in this case are shown to have been innocent parties, and ignorant of the forgeries on the note in question at the time the sale of it was made. Who shall, in such a case as this, bear the loss?"

English and American authorities have been cited, which, I think, apart from a sound rule of public policy, determine the liability of the proper party here; and without referring particularly to all the authorities, I will name the last leading case in England, of *Gurney vs. Worinsby*, decided in November, 1854, by the Court of Queen's Bench, in which Lord Campbell decides that the vendor of a bill of exchange, though no party to the bill, is responsible for its genuineness; and if it turns out that the name of one of the parties to it is forged, he is liable to the vendees.

The defendants in that case were bill-brokers, who received the bill to be discounted and took it to the plaintiffs, who were money-lenders, with whom the defendants, as bill-brokers, had previously had similar dealings; the defendants did not disclose their principal, and were regarded as principals, and it was held by the court, all the judges con-

curing, that they were liable, and the plaintiffs should recover back the amount paid by them for the forged bill. "Here that which purported," said Lord Campbell, (28 Eng. Law and Equity Rep. 259,) "to be the acceptance of one of the parties to the bill, and upon which the plaintiffs gave credit and relied, was a forgery, and of no value whatever; there was a failure of consideration, therefore, entitling the plaintiffs to recover."

The case at bar is like the case just cited, and the same rule should apply, in my opinion, to its determination.

No decision in England, before or since, is in conflict with that decision, and in America (except the case of *Baxter vs. Duren*, 29 Maine Rep. 440,) no authority can be found to impair or conflict with the judgment of Lord Campbell. In the case of *Canal Bank vs. Bank of Albany*, (1 Hill Rep. N. Y., p. 290,) Judge Cowen says: "no doubt the parties are equally innocent in a moral point of view; it was the duty, or more properly, a measure of prudence in each to have inquired into the genuineness of the note; the defendants have obtained the plaintiffs' money without consideration, and the plaintiffs have a right to recover." This was a case of forged bank notes, passed by the defendants to the plaintiffs. Other decisions in Massachusetts and New York sustain the same view.

It is true, the case of *Baxter vs. Duren* is invoked to establish a different rule from that laid down by Lord Campbell and confirmed by many American authorities. With due respect for the court, it will be found, on examining the authorities upon which it rests its decision, that they do not sustain the doctrine of the learned judge, viz.: "That where no debt is due or created at the time, and the paper is sold as other goods and effects are, the purchaser cannot recover from the seller the purchase money. There is in such case no implied warranty of the genuineness of the paper; the law respecting the sale of goods is applicable; the only implied warranty is, that the seller owns, or is lawfully entitled to dispose of the paper or goods." This decision, I submit, cannot be sustained by authority, or on principles of public policy.

"My conclusion is, that if the plaintiff and the defendant, as it is conceded they did, acted in good faith and in ignorance of the forgery, then the loss must fall on the vendor; he is nearest the inception of the transaction, and if acting as principal, must be clearly liable, if he disposes or sells an invalid bill or forged note; or, if acting as agent, he must be presumed to know the party who employed him, and the circumstances of the case; at all events, as principal or agent, he comes under an implied guarantee to the vendee of the genuineness of the paper sold, unless he discloses at the time his principal, if he acts as an agent." (See p. 184 of Manual.)

47. Days of Grace on Checks.

The case of *Bowen vs. Newell*, cited in the text, is reported in 4 Selden, p. 190, and again in 3 Kernan, p. 190, and settles the law in the State of New York. (See p. 113 of Manual.)

CHAPTER THIRD.

OF THE TRANSFER OF BILLS AND NOTES.

- I. WHO MAY TRANSFER.—1. Transfers by Infants. 2. Transfers by Married Women. 3. Transfers by Executors, Assignees, Trustees, Partners, &c.
- II. TO WHOM THE TRANSFER MAY BE MADE.—Transfers to prior Endorsers.
- III. MODES OF TRANSFER.—1. Transfers of Non-Negotiable Bills or Notes. 2. Transfers of Negotiable Bills or Notes. 3. Transfer of bills, &c., payable to a fictitious person. 4. Assignment of Negotiable Bills. 5. Effect of Omission to Endorse. 6. Form of Endorsement. 7. Form of Endorsement by Agent. 8. Kinds of Endorsement. 9. Blank Endorsement. 10. Endorsements in full and partly in full. 11. Restrictive Endorsements. 12. Qualified Endorsements. 13. Conditional Endorsements.
- IV. TIME OF TRANSFER.—1. Effect of Transfer before maturity. 2. Endorsements upon Blank Paper.
- V. OBLIGATIONS OF ENDORSERS.—1. Obligations upon Transfer by Endorsement. 2. Obligations upon Transfer by Delivery. 3. Revocation of Endorsement.

OF THE TRANSFER OF BILLS AND NOTES.

1. *Who May Transfer.*

A transfer by endorsement of a bill or note will convey no title, except against the person making it, unless it be made by him who has a right to make the transfer. A transfer by delivery, on the other hand, will convey a title, if the person to whom the note is transferred, take the bill or note in good faith for a valuable consideration and before maturity. In case, therefore, of a loss of a bill or note by theft or accident, the thief or finder may confer a title by transferring it, if it be assignable by mere delivery; if it be assignable by endorsement he cannot. (Bayley, Bills, chap. 5, § 2.)

2. *Transfers by Infants, &c.*

An endorsement by an infant payee or endorsee of a bill or note will not pass any interest therein as against himself; but it seems well settled that the endorsee by a transfer and endorsement by an infant, will acquire a good and valid title to the bill or note against every other party thereto, except the infant, since it is not a void but a voidable title only. The infant may indeed avoid it, and intercept the payment to the endorsee, or, by giving notice to the antecedent parties of his avoidance, furnish to them a valid defence against the claim of the endorsee. But, until he does so avoid it, the endorsement is to be deemed, in respect to such antecedent parties, as a good and valid transfer. (Story, Prom. Notes, § 80.)

3. *Transfers by Married Women.*

In case of the marriage of a female, who is payee or endorsee of a bill, the property thereof vests in her husband, and he becomes solely entitled

to negotiate it, as holder, and to endorse it in his own name. If a bill or note be made payable to a married woman, it is in the contemplation of the law, payable to the husband, and an effectual endorsement should in general be in his name. But if the husband permit his wife to act as his agent, or to carry on trade as a single woman, his authority to an endorsement by her may be presumed; and if a bill or note be made payable to a married woman, and she endorse it for value in her own name, and the acceptor or maker afterwards promise to pay it, in an action against him by the endorsee, it will be presumed that she had authority from her husband to endorse in that form, and the endorsement will be considered as vesting a legal title to the note in the plaintiff.

4. Transfers by Executors, Assignees, Trustees, Partners, &c.

In case of the death of the holder, the right of transfer is vested in his executor or administrator. And in case of the bankruptcy of the payee or endorsee, all his rights of transfer become vested in his assignees, who may, by law, transfer the same in their own names.

In case of a bill or note payable or endorsed to a trustee for the use of a third person, (such as a bill payable or endorsed to A. for the use of B.,) the trustee alone is competent to convey the legal title to the bill or note by a transfer or endorsement. In the case of a partnership, a bill or note payable or endorsed to the firm may be transferred by any one of the partners, in the name of the firm, at any time during the continuance of the partnership. But, where the partnership is dissolved during the lifetime of the partners, neither partner can afterwards endorse a bill or note, payable to the firm, in the name of the firm. But where the dissolution is by the death of one partner, there the survivor may endorse a bill or note, payable to the firm in his own name. If a bill or note be made payable or endorsed to several persons not partners, (as to A., B. and C.,) there the transfer can only be by a joint endorsement of all of them. (Story, Bills, § 197.)

II. TO WHOM THE TRANSFER MAY BE MADE

The transfer of a bill or note may be made to any person of full age, who is not otherwise incompetent. It may also be transferred to an infant, and thereby the interest will vest in him, or to a married woman, and there the interest will vest in her husband, who thereby becomes the legal owner thereof, and may treat it as payable to himself. If the transfer be to a person who is an idiot or a lunatic, there does not seem to be any legal incapacity in holding it to be valid in his favor, if it be clearly and equivocally for his benefit. If the transfer be to an executor or administrator, or to any person as a trustee for another, it will operate as a transfer to them personally, although the trust may attach upon the proceeds in their hands. If the transfer be to an agent, by an endorsement of his principal in blank, he may treat the bill as between himself and all the other parties, except his principal, as his own, and fill it up in his own name, or he may hold it for his principal, and act in his name. If the endorsement be filled up to the agent by the principal,

then he is invested with the legal title, as to all persons but his principal. But the principal may, at any time, revoke his authority and reclaim his rights. (Story, Bills, § 198.)

1. *Transfers to Prior Endorsers.*

A bill or note cannot be endorsed to a *prior* party to the instrument, at least so as to enable him to sue any endorser of the bill whose name was upon it subsequent to his own, except under peculiar circumstances, as, for example, where his name was originally used for form only, and it was understood by all the parties to the instrument, that although nominally made payable to him, it was substantially to be paid to the person transferring the note again to him. (*Bishop vs. Hayward*, 4 Term R. 470.)

III. MODES OF TRANSFER.

1. *Transfers of Non-negotiable Bills or Notes.*

If a bill or note be not originally made negotiable, or, in other words, be not payable to the bearer or to order, it may be transferred by the holder in such a manner as to bind himself, and to give his immediate assignee a right thereon against himself; and the transfer, if made in good faith, for a valuable consideration, will entitle him to maintain an action thereon in the name of the assignor, against the antecedent parties, and if he recover, he will be entitled to hold the proceeds for his own use. (Story, Bills, § 199.)

2. *Transfers of Negotiable Bills and Notes.*

If a bill or note be negotiable, and is payable to bearer, it may be transferred by mere delivery. But although it may be transferred by mere delivery, there is nothing in the law which prevents the payee of a bill or note, payable to himself or bearer, from transferring it by endorsement. In such a case, he will incur the ordinary liability of an endorser, from which, in the case of a mere transfer by delivery, he is ordinarily exempt.

3. *Transfers of Bills, &c., Payable to a Fictitious Person.*

If a bill or note be made payable to a fictitious person or order, then, as against all the persons who are parties thereto and aware of the fiction, it will be deemed a bill or note payable to the bearer, in favor of a holder, in good faith, without notice of the fiction; but, if the holder have notice thereof, the bill or note would probably be held void. (*Bennett vs. Farnell*, 1 Camp. 130.)

4. *Assignment of Negotiable Bills, &c.*

If a bill or note be payable to a person or his order, it is properly transferable by endorsement. If it be assigned without endorsement, the holder will take it subject to all the equities existing between the original parties thereto. If by mistake, or accident, or fraud, a bill has

been omitted to be endorsed upon a transfer, when it was intended that it should be, the party may be compelled by a court of equity to make the endorsement.

5. Effect of Omissions to Endorse.

The question has lately arisen, whether, in case a person takes a bill or note, payable to the order of A., and forgets at the time of the transfer to have it endorsed by A., he takes it subject to the equities existing between the original parties thereto, although A. subsequently endorses it. The better opinion would seem to be that the omission to have the bill or note properly endorsed will not subject it to such equities. In *Smith vs. Pickering*, (Peake's Cases, 50,) A. drew a bill upon B., payable to A.'s own order, which B. accepted. The drawer delivered this bill to C. for a valuable consideration, but forgot to endorse it; he afterwards became bankrupt and then endorsed it. C. having brought an action against the acceptor, Lord Kenyon was clearly of opinion that the endorsement was good. So, too, in a case reported in 1 Camp. 422, Lord Ellenborough, under similar circumstances, held that the writing of the endorsement had reference to the delivery of the bill.

6. Form of Endorsement.

No particular form of words is necessary to constitute a valid endorsement; the mere signature of the party making it is sufficient. It has even been held that the initials of the holder of a check, endorsed on a check, are sufficient to charge him as endorser. In the case of *Brown vs. The Butchers' Bank*, (6 Hill, 443,) it was held that the defendant, B., was the endorser of a note, on which the figures 1, 2, 8, were written with a lead pencil, his name not appearing at all upon the paper; there being parol evidence to show that the figures were made by him, and that he intended, by placing them on the back of the paper, to bind himself as endorser. It also appeared that he was able to write. This is a strange decision, and seems to be contradicted by the cases of *Fenn vs. Harrison*, (3 Term Rep. 757;) and *ex parte Shuttleworth*, (3 Ves. 368.) The word endorsement, in its strict sense, seems to import a writing on the back of the bill, but it is well settled that this is not essential. The signature ought to be in ink, in order to prevent erasure; but even this has been held not to be indispensable, and that an endorsement in pencil is sufficient.

7. Form of Endorsement by Agent.

An agent, upon endorsing a bill or note, should expressly endorse as agent, as A. B., agent for C. D., or write the name of his principal; otherwise the endorsement would be inoperative. In the negotiation of bills or notes, agents are sometimes compelled to endorse them for the purpose of transmitting them to their principals, and if such endorsement be written unconditionally, the agent, though he have an interest in the transaction, may be liable to pay the amount of the bill or note. To avoid responsibility, therefore, he should add to his endorsement the words "without recourse," or other of like effect. (*Chitty, Bills*, § 228.)

8. *Kinds of Endorsement.*

An endorsement may be in blank or in full; restrictive, qualified or conditional. It is called an endorsement in blank, when the signature of the party making it is alone put upon the bill or note, without any words over or preceding it, expressive of any intention whatsoever. It is called an endorsement in full, when there is written over the signature of the endorser the name of the person in whose favor it is made. The usual form is "Pay to A. or order;" but if it be "Pay to the order of A," it has the same legal effect; that is, it is payable to A. as well as to his order. An endorsement is restrictive when it restrains the negotiability of a bill or note to a particular person or for a particular purpose. An endorsement is qualified when it restrains, or limits, or qualifies, or enlarges the liability of the endorser, in any manner different from what the law generally imports as his true liability. And, finally, an endorsement is conditional, when it is made upon some condition which is either to give effect to or to avoid it. (Story, Bills, § 206.)

9. *Blank Endorsements.*

A blank endorsement makes a bill or note transferable, by the endorsee and every subsequent holder, by mere delivery; and when the first endorsement is in blank, as against the payee, the drawer, acceptor or maker, the bill or note is afterwards assignable by mere delivery, notwithstanding it may have upon it *subsequent* endorsements in full, because a holder, by delivery, may declare in an action upon the bill or note, and recover as the endorsee of the payee, and strike out all the subsequent endorsements. It follows from this doctrine that if the bill or note should, after such blank endorsement, be lost, or stolen, or fraudulently misapplied, any person who should afterwards become the holder of it in good faith, for a valuable consideration, without notice, would be entitled to recover the amount thereof, and hold the same against the rights of the owner at the time of the loss or theft. (Chitty, Bills, chap. vi. § 1.)

10. *Endorsements in Full, and Partly in Full, and Partly in Blank.*

If a bill be endorsed in full by the first endorser, or by a holder under him, no subsequent holder can recover against the antecedent parties, unless he can deduce a regular title to the bill from the person whose name stands as the first endorsee. If all the subsequent endorsements are in blank, he may make himself, at his pleasure, the immediate endorsee of any one of them, or he may deduce his title through them all in succession. If some of the subsequent endorsements are in full and some blank, then he must make a regular deduction of title through them all, or make himself the immediate endorsee under some prior blank endorsement. And wherever, in the regular course of endorsements, some are full and some are blank, the bill or note, as to all persons taking it subsequently to a blank endorsement, may pass either by delivery or by endorsement. (Story, Bills, § 208.)

11. *Restrictive Endorsements.*

The payee or endorsee, having the absolute property in the bill or note, has the power of limiting the payment to whom he pleases, and consequently may make a restrictive endorsement; thus he may stop the currency of the bill or note by giving a bare authority to receive the money as by an endorsement, requesting the drawee or maker to pay *to A. for my use, or to A. only.* As, however, these restrictive endorsements tend to impair the negotiability of bills and notes, an intention to create such a restriction will not be presumed from equivocal language, and especially where it otherwise admits of a satisfactory interpretation.

12. *Qualified Endorsements.*

A qualified endorsement does not impair the negotiability of a bill or note. Thus, for example, an endorsement of a bill to A. "without recourse," will not restrain its negotiability, but will simply relieve the endorser from responsibility, in case of the non-acceptance or non-payment thereof.

13. *Conditional Endorsements.*

If the payee or endorsee of a bill or note annexes a condition to his endorsement before acceptance, the drawee, who afterwards accepts it, is bound by the condition, and if the terms of it be not performed, the property in the bill reverts to the payee, and he may recover the sum payable in an action against the acceptor. (Chitty, Bills, chap. vi. § 1.)

IV. TIME OF TRANSFER.

A transfer of a bill or note may be made at any time while it remains a subsisting unpaid bill or note, whether it be before or after it has arrived at maturity. But if the transfer be made before maturity to a *bona fide* holder, for a valuable consideration, he will take it free from all equities between the antecedent parties of which he has no notice. If the transfer be made after maturity, the holder takes it as a dishonored bill, subject to all the equities attaching to the bill or note between the original parties thereto, whether he has any notice thereof or not. Still, however, subject to such equities, the holder, by endorsement after the maturity of a bill, will be clothed with the same rights and advantages as were possessed by the endorser, and may avail himself of them accordingly. (Story, Bills, § 220.)

1. *Effect of Transfer before Maturity.*

"There is a material distinction in the effect of a transfer made before a bill is due and one made after that time; in the first case the transfer carries no suspicion on the face of it, and the assignee receives it on its own intrinsic credit; nor is he bound to inquire into any circumstances existing between the assignor and any of the previous parties to the bill, as he will not be affected by them; and although at one time it was considered that if the circumstances under which the trans-

fer takes place be such as would have naturally excited the suspicions of a prudent and careful man, the holder cannot recover; a contrary doctrine now prevails, and it is not enough to deprive a holder for value of his remedy on the bill to show that he was guilty even of *gross negligence*, unless it also appear that he acted in *bad faith*." (Chitty, Bills, chap. vi. § 1.)

2. *Endorsements upon Blank Paper.*

Endorsements are sometimes made upon bills or notes containing blanks, to be afterwards filled up, and sometimes upon blank paper, which are intended to be filled up, so as to make the party an endorser. In all such cases, as against him, the bill or note is to be treated exactly as if it had been filled up before he endorsed it, and he will be bound accordingly. And it will make no difference in the rights of the holder that he knows the facts; unless, indeed, there should be a known fraud upon the endorser. (Story, Bills, § 222.)

V. OBLIGATIONS OF ENDORSERS

1. *Obligations upon Transfer by Endorsement.*

Besides amounting to a transfer of the property in the bill or note, the endorsement creates an implied contract on the part of the endorser that the bill or note shall be duly honored, and if not, that he, upon due protest and notice, will pay the amount to the holder. The endorsement also imports that the antecedent names on the bill are genuine, and that he has a good title under them to the same.

2. *Obligations upon Transfer by Delivery.*

If the bill or note be merely delivered, as in the case of a bill payable to bearer, no obligation whatsoever is created, except between the immediate parties to the transfer. But, as between these parties, where the transfer is for a valuable consideration, and not a mere sale or exchange, there is an implied obligation that the antecedent names on the bill or note are genuine, and that as far as the knowledge of the person passing it extends, there is no reason to doubt that it will be duly honored upon presentment. (Story, Bills, § 225.)

3. *Revocation of Endorsements.*

An endorsement of a bill once complete, by delivery over to the endorsee for value, is not revocable without his consent; and although by mistake an endorsement has been erased by a third person, the endorser will continue liable. But an endorsement, like an acceptance, may, before it has been delivered over to a *bona fide* holder be revoked.

CHAPTER FOURTH.

OF LETTERS OF CREDIT.

A letter of credit is an open letter of request, whereby one person requests some other person or persons to advance money, or to give credit to a third person, named therein, for a certain amount, and promises that he will repay the same to the person advancing the same, or accept bills drawn upon himself for the like amount. It is called a general letter of credit, when it is addressed to all merchants, or other persons in general, requesting such advance to a third person, and a special letter of credit, when it is addressed to a particular person by name, requesting him to make such advance to a third person.

If the letter of credit be of the latter sort, there does not seem to be any doubt that it is an available promise in favor of the person to whom it is addressed, and who makes the advance upon the faith thereof. But if the letter of credit be general, it is a matter of some doubt whether the writer is bound to the person making advances upon the strength of the letter. The question does not appear to have been ever decided in England, but it has several times been thoroughly discussed in the Supreme Court of the United States. (*Laurason vs. Mason*, 3 Cranch, 492; *Adams vs. Jones*, 12 Peters, 207.) The doctrine was maintained in these cases, that the letter writer is bound positively and directly to any party making the advance upon the faith of the letter, not only where the letter purports, on its face, to be addressed generally to any person or persons whatsoever who should make the advance, but also in cases where the letter is addressed solely to the person to whom the advance is to be made, and merely states that the person signing the same will become his surety for a certain amount, without naming any person to whom he will become security, if it is obviously to be used to procure credit from some third person, and the advance is made upon the faith of the letter by such third person.

CHAPTER FIFTH.

OF BANK NOTES.

Bank notes are promissory notes made by a bank or banker. They are ordinarily put in circulation as currency, and accordingly they usually pass and are received as cash or ready money. "These notes," said Lord Mansfield, in *Miller vs. Race*, (1 Burr, 457,) "are not like bills of exchange, mere securities for debts, nor are so esteemed, but are treated as money in the ordinary course and transactions of business by the general consent of mankind." It matters not how long bank notes have been issued, or how long they remain in circulation, or whether

they have been received back into the bank or by the banker and re-issued or not, for they are always treated as negotiable paper not over due, or liable to any equities between the bank or banker, and any parties who have subsequently received them, or between any intermediate parties.

The bank or banker always remains liable to pay their bank notes to any person who becomes the holder or bearer thereof, at any distance of time from the original issue thereof; and if the holder or bearer acquire the same, in good faith, and for a valuable consideration, he can enforce their payment by the bank or banker, even although he received them from one who had stolen them or obtained them by fraud.

A hundred years ago, in the case of *Miller vs. Race*, (1 Burr, 452,) a banker was held liable, by Lord Mansfield, to pay a bank note stolen from him to a *bona fide* holder for a valuable consideration. In the case referred to, it appeared that the note was stolen from the mail in which it had been put, and that afterwards it came into the possession of the plaintiff for a full and valuable consideration, and in the usual course and way of his business, and without any knowledge of the theft. After an elaborate argument, the court were unanimously of opinion that the plaintiff was the owner of the note, and thereby in effect determined that as such he was entitled to maintain an action thereon against the Bank of England, if it refused payment of the note.

Afterwards, in the case of *Lawson vs. Weston*, (4 Esp. Rep. 56,) the same question arose. A bill for £500 had been lost, and the loser had advertised it in the newspapers, and it was discounted by the plaintiff, a banker, for a stranger, who, on being required, wrote a name upon it, whereupon no further questions were asked; and it was held by Lord Kenyon, upon the trial of the cause, that the plaintiff was entitled to recover. "I think the point in this case," said he, "has been settled by the case of *Miller vs. Race*. If there was any fraud in the transaction, or if a *bona fide* consideration had not been paid for the bill by the plaintiffs, to be sure they could not recover; but to adopt the principle of the defence to the full extent stated, (namely, that the bill being for so large a sum, further inquiries ought to be made,) would be at once to paralyze the circulation of all the paper in the country. The circumstance of the bill having been lost might have been material, if they could bring knowledge of that fact home to the plaintiff. The plaintiff might or might not have seen the advertisement. It would be going a great length to say, that a banker is bound to make inquiry concerning every bill brought to him to discount; it would apply as well to a bill for £10 as £10,000. The magnitude of the bill has been pressed as a ground of suspicion by the defendant's counsel; I do not feel it of such importance." These decisions have never since been seriously questioned. The only doubt that has been felt in relation to the subject has been, whether the holder could be considered as acting in good faith, if he took the bank note under circumstances which ought to have excited the suspicions of a prudent and careful man. After considerable fluctuation of opinion, however, it was finally established, that negligence is not alone enough to destroy the title of a holder for value, but

that a case of bad faith on the part of such holder must be made out in order to defeat his claim.

2. The law is well settled, that where the note of a third person is received in payment of an antecedent debt, the risk of his insolvency is upon the party from whom the note is received, unless there is an agreement or understanding between the parties, express or implied, that the party who receives the note is to take it at his own risk. The same principle is applicable to the notes of an incorporated bank, except that, as to the latter, there is always an implied understanding between the parties, that if the bill at the time it is received is in fact what the party receiving it supposes it to be, he is to run the risk of any future failure of the bank. This implied agreement between the parties arises from the fact that bills of this description, so long as the bank which issued them continues to redeem them in specie at its counter, are by common consent treated as money, and are constantly passed from hand to hand as such. (*Ontario Bank vs. Lightbody*, 11 Wend. 1; 13 Wend. 104.)

If, however, the party receiving the notes refuses to take them as an absolute payment, and thus throws the risk upon the transferrer of the notes, he must present them to the bank for redemption within a reasonable time, otherwise, if the bank becomes insolvent while he retains the notes, the loss will fall upon him. (Story, Prom. Notes, § 389.)

But there is some difference of opinion upon the question, whether if a bank note be transferred after the bank or banker issuing it has stopped payment, the transferrer or the transferee shall bear the loss, both being ignorant at the time of the transfer of the stoppage. In Pennsylvania, Tennessee, Alabama, and perhaps in Massachusetts, it has been held that the transferee must bear the loss. But in South Carolina, New Hampshire and in New York, the opposite doctrine, which certainly seems the more reasonable, has been maintained. In the last named State, the question arose in the case of *Lightbody vs. Ontario Bank*, (11 Wend. 1,) affirmed in the Court of Errors, (13 Wend. 101.) Here A., on the thirtieth day of May, 1828, presented his check to the Ontario Bank, in Utica, and received in part payment thereof a bank note of the Franklin Bank of the city of New York. The latter bank stopped payment on the twenty-ninth of May, at ten o'clock, A. M., although the bills of the bank were current in Utica until the thirty-first of May. The bill was paid by the Ontario Bank in good faith and in ignorance of the failure of the Franklin Bank. Upon an action brought by A. against the Ontario Bank, to recover the amount of the bank note received by him, it was held that the bank must bear the loss. "The receiving bank notes as money," said Chancellor Walworth in the Court of Errors, "is not a legal but only a conventional regulation, adopted by the common consent of the community. The principle of considering bank bills as money, which the receiver is to take at his own risk, cannot, therefore, be carried any further than the conventional regulation extends—that is, to consider and treat them as money so long as the bank by which they are issued continues to redeem them in specie, and no longer. When, therefore, a bank stops payment, its bills cease to be a conventional representative of the legal currency, whether the holder

is aware of that fact or not; from that moment the bills of such bank lose their natural and legal character of promissory notes, or mere securities for the payment of money, and if they are afterwards passed off to an individual who is equally ignorant of the failure of the bank, there is no agreement on his part, either express or implied, that he shall sustain the loss, which has already occurred, to the original holder of the bills. Upon the principles applicable to cases of mutual mistake, as those principles are administered in courts of equity, it is now settled, that if an individual passes to another a counterfeit bill or an adulterated coin, both parties supposing it genuine at the time it was received, the one who passes it is bound to take it back and give him to whom it was passed a genuine bill, or an unadulterated coin in lieu thereof, or in other words, to make good the loss. That principle of natural justice is equally applicable to the case under consideration."

Although the better opinion would thus seem to be that the transferrer of a bank note of a bank insolvent at the time of transfer is bound to redeem it, the doctrine must be understood with this limitation, that the transferee does not make the note his own by failing to give notice of the failure of the bank, and to offer to return the notes to the person from whom he received them. Two or three cases, decided in England within a few years, will serve to illustrate this doctrine. In an action for the price of goods, it appeared that the same were sold on Saturday, and on the same day, at three o'clock in the afternoon, the vendee delivered to the vendor, as and for the payment of the price, certain promissory notes of the bank of D. & Co., payable on demand to bearer. D. & Co. stopped payment on the same day, at eleven o'clock in the morning, and never afterwards resumed their payments, but neither of the parties knew of the stoppage or of the insolvency of D. & Co. The vendor never circulated the notes or presented them to the bankers for payment; but on Saturday, one week after the failure of the bank, he required the vendee to take back the notes and to pay him the amount, which the latter refused. The court held that, under the circumstances, the vendor of the goods was guilty of negligence, and had thereby made the notes his own, and, consequently, that they operated as a satisfaction of the debt. (*Camidge vs. Allenby*, 6 Barn. & Cres. 373; 9 Dowl. & Ry. 391.)

In *Henderson vs. Appleton*, cited in Chitty, Bills, ch. 9, p. 384, 9 Ev., the case was, that A. sold goods to B. on the twelfth of December, and it was agreed between them that the payment should not be made until the nineteenth, when B. paid A. in the notes of a country bank. By the course of the post the notes could not have been presented at the bank till the twenty-first of December. The bank paid all day on Saturday, the seventeenth of December, but no later. On the twenty-first, A. met B. and offered to return or exchange the notes with the defendant, but B. refused, saying, that the bank was going on the twentieth. The court, by Bayley J., said he believed the ground of the decision in *Camidge vs. Allenby* was that the notes should be deemed a payment, unless returned in a reasonable time, and that the plaintiff in that case, by keeping the notes a week after he heard of the stoppage, without notice to the defendant, had precluded himself from recovery; but that here A.

had offered to return, and the defendant had refused to take back the notes, and therefore the former was entitled to recover.

And again, in *Rogers vs. Langford*, (1 Crompt. & Mees. 637,) it appeared that, on the twenty-third of November, A. bought goods from B., which he paid for in country bank notes. On Monday, the twenty-eighth, B. requested A.'s servant, as a favor, to exchange the notes for money, which he accordingly did. On the same day the bank stopped payment. A. heard of it on Tuesday, and on Wednesday wrote to B. informing him of the failure of the bank, and desiring him to exchange the notes; but the notes were not produced or tendered to B. until long afterwards, nor were they ever presented at the bank. In an action brought by A. against B. to recover the value of the notes, it was held that A. was not entitled to recover. The court, by Bayley J., said, "I think the notes ought to have been either presented by the holder to the bank for payment, or else to have been returned without delay to the defendant, so as to give him an opportunity of getting payment for them, or of making the best of them."

NOTARIES PUBLIC, STATE OF NEW-YORK.

CHAPTER 308.

An Act to authorise the appointment of Commissioners to take the proof and acknowledgment of Deeds, and other instruments, and to administer oaths in Great Britain and France. Passed April 17th, 1858.

SEC. 1. The Governor of this State is hereby authorized to appoint and commission one or more, and not exceeding three commissioners, in each of the following cities: London, Liverpool and Glasgow in Great Britain, and Paris and Marseilles in France, who shall continue in office for four years, and until a successor shall be appointed, and shall have authority to take the acknowledgment or proof of the execution of any deed or written instrument to be recorded or read in evidence in this State, except bills of exchange, promissory notes, and last wills or testaments; and also to administer an oath or affirmation to any person or persons who may desire to take the same, and to certify the taking of such oath or affirmation; and also to certify the existence of any patent, record or other document, remaining on record in any public office or official custody in Great Britain or France, and the correctness of a copy of any such patent, record or other document. The certificate of any one of such commissioners, under his official seal, and subscribed by him, in regard to the acknowledgment or proof of the execution of any such deed or written instrument, or the taking of such oath or affirmation, or the existence or correctness of a copy of such patent, record or document, when authenticated by the Secretary of State, as hereinafter mentioned, shall have the same effect to authorize the recording or reading in evidence of such deed or written instrument, oath or affidavit, patent, record or document, as is given by law to like certificates made by justices of the Supreme Court of this State, or to any certificate or exemplification by any office of this State of any patent, record or other document.

SEC. 2. Before any such deed or other instrument, oath or affidavit, patent, record or document, shall be entitled to be used, recorded or read in evidence, in addition to the preceding requisites, there shall be subjoined or affixed to the certificate, signed and sealed by such commissioner as aforesaid, a certificate under the hand and official seal of the Secretary of State of this State, certifying that such commissioner was, at the time of taking such proof or acknowledgment, or of administering such oath or affirmation, duly authorized to take the same, and that the Secretary is acquainted with the handwriting of such commissioner, or has compared the signature to such certificate with the signature of such commissioner deposited in his office, and has also compared the impression of the seal affixed to such certificate with the impression of the seal of such commissioner deposited in his office, and that he believes the signature and the impression of the seal of the said certificate to be genuine.

SEC. 3. Every commissioner appointed by virtue of this act, before performing any duty or exercising any power in virtue of his appointment, shall take and subscribe an oath or affirmation before a person authorized to administer such oath or affirmation by the laws of this State, or before a judge or clerk of one of the courts of record of the kingdom or empire in which such commissioner shall reside, well and faithfully to execute and perform all the duties of such commissioner under and by virtue of the laws of the State of New-York; and shall also cause to be prepared an official seal, on which shall be designated his name, and the words "Commissioner of Deeds for the State of New-York," with the name of the city for which he shall be appointed; and shall cause a distinct impression of such seal, taken upon wax or some other substance capable of receiving and retaining a clear impression, together with his signature in his own proper writing, and the oath or affirmation above in this section mentioned, duly certified by the person before whom it may be taken, to be filed in the office of the Secretary of this State.

SEC. 4. As often as the term of office of any commissioner appointed by virtue of this act shall expire, or the office shall become vacant by the death, resignation or removal from the city for which he was appointed, of such commissioner, the Governor shall have power to fill the office by new appointment, and the person so appointed shall, upon complying with the provisions of the third section of this act, hold his office by the tenure, and shall possess the powers specified in the first section of this act.

SEC. 5. The Secretary of State shall be entitled to demand and receive the sum of twenty-five cents for every certificate given by him in pursuance of the third section of this act.

SEC. 6. It shall be the duty of the Secretary of State to forward instructions and forms in accordance with the laws of this State, together with a copy of this act, to each person who shall be appointed a commissioner under and by virtue of this act.

SEC. 7. The fees of such commissioner for services under this act shall be as follows:

In Great Britain, for administering each oath and certifying the same, and for making each certificate attached to a patent, record or other document, one shilling sterling; in France, one franc and twenty-five centimes.

In Great Britain, for taking each acknowledgment or proof of any deed or written instrument to be recorded or read in evidence, four shillings sterling; in France, five francs.

SEC. 8. A copy of any patent, record or other document, remaining of record in any public office of any foreign kingdom, State or country, when certified according to the form in use in such kingdom, State or country, and also certified according to the first and second sections of this act, may be read in evidence in any of the courts of this State.

SEC. 9. The certificate of any one of said commissioners annexed to a paper purporting to be certified as in the last section provided, shall be presumptive evidence that it has been certified according to the form in use in such kingdom, State or country.

CHAPTER 360.

An act authorizing Notaries Public of the State of New-York to perform the duties now performed by Commissioners of Deeds. Passed April 15th, 1859.

SEC. 1. In addition to their present powers, notaries public of this State are hereby authorized to administer oaths and affirmations, and to take the proof and acknowledgments of deeds, mortgages and any other papers for use or record in this State, in all the cases where the same may now be taken and administered by commissioners of deeds, and under the same rules, regulations and requirements prescribed to commissioners of deeds; and such notaries' acts may be performed without official seal.

SEC. 2. This act shall take effect immediately.

CHAPTER 485.

An Act providing for the appointment of an additional number of Notaries Public in the City and County of New-York. Passed April 19th, 1859.

SEC. 1. The Governor is hereby authorized and empowered, and with the advice and consent of the Senate, to appoint, in and for the city and county of New-York, in addition to the number now prescribed by law, one hundred additional notaries public.

SEC. 2. This act shall take effect immediately.

CHAPTER 508.

An Act to define and limit the number of Notaries Public in the several Counties in this State, and confer authority to take affidavits and acknowledgments. Passed May 7th, 1863.

SEC. 1. Hereafter no more notaries public shall be appointed in any county in this State, except in the county of Kings, the city of Buffalo and the city and county of New-York, than one for every two thousand of population residing in said county, as shown by the census taken in this State next preceding any appointment hereafter to be made.

SEC. 2. Notaries public shall have all the powers now conferred upon them by law, and shall also have power to take affidavits and certify to the same, and to take and certify the acknowledgment and proof of deeds and other instruments in writing in all cases where justices of the peace or commissioners of deeds may now take and certify the same; and all acts of notaries public in making or taking such certificates of the acknowledgment or proof of deeds or other instruments in writing since the passage of the act, chapter three hundred and sixty, of the laws of eighteen hundred and fifty-nine, are hereby confirmed and made valid.

SEC. 3. This act shall take effect immediately.

COMMISSIONERS OF DEEDS.

Commissioners of deeds appointed for any county or city, have power

1. To take the proof and acknowledgment of conveyances of real estate, and the discharge of mortgages.

2. To take the acknowledgment of bail in any action in the Supreme Court, and in the Court of Common Pleas, [County Court,] of the county for which they are appointed, or in the Mayor's Court of the city for which they are appointed; and in the city and county of New-York, in any action in the Superior Court of law therein.

3. To take the acknowledgment of satisfaction of judgments, in the Court of Common Pleas, [County Court,] of the county for which they are appointed, or in the Mayor's Court of the city for which they are appointed, or in the Supreme Court; and to perform such other duties as are or may be enjoined by law. P. 470, sec. 31.

Whenever any oath or affidavit is or may be required or authorized by law, in any cause, matter or proceeding, (except oaths to jurors and witnesses in the trial of a cause, oaths of office, and such other oaths as are required by law to be taken before particular officers,) the same may be taken before any judge of any court of record, any [justice of the peace in towns,] commissioner of deeds or clerk of any court of record; and when certified by any such officer to have been taken before him, may be read and used in any court of law or equity, of record or not of record, within this State, and before any officer, judicial, executive or administrative, before whom any such cause, matter or proceeding may be pending; and affidavits, to be read in the Supreme Court, may also be taken by any commissioner appointed for that purpose by the justices of the said court. P. 471, sec. 38.

The docket of a judgment rendered in any court of record may be cancelled and discharged by the clerk thereof, upon filing with him an acknowledgment of satisfaction, signed by the party in whose favor such judgment was obtained, or by his executors or administrators, duly authenticated as hereinafter directed. P. 609, sec. 20.

SEC. 21. Such acknowledgment shall be made before the clerk, or some judge of the court in which the judgment was rendered, or before some judge of the county courts, or commissioner of deeds, who shall certify that the party making the same was known, or was made known, to such officer, by competent proof.

SEC. 22. Such acknowledgment may also be made by the attorney on record of the party in whose favor the same was rendered, within two years after the filing of the record of such judgment, in the same manner and with the like effect as if made by such party himself; but such satisfaction shall not be conclusive against the party in whose favor the judgment was rendered, in respect to any person to whom actual notice of the revocation of the authority of such attorney shall have been given, before any payment on such judgment shall have been made, or before any purchase of property bound by such judgment shall have been effected.

THE LAW OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

Decisions of the Courts of the various States in 1860, 1861 and 1862, in relation to Bills of Exchange and Promissory Notes, with the decisions of the Supreme Court of the United States and of the English Courts.

I. ALABAMA,	XI. MAINE,	XXI. SOUTH CAROLINA,
II. CALIFORNIA,	XII. MARYLAND,	XXII. TENNESSEE,
III. CONNECTICUT,	XIII. MASSACHUSETTS,	XXIII. TEXAS,
IV. FLORIDA,	XIV. MICHIGAN,	XXIV. VERMONT,
V. GEORGIA,	XV. MISSISSIPPI,	XXV. VIRGINIA,
VI. ILLINOIS,	XVI. NEW-HAMPSHIRE,	XXVI. WISCONSIN,
VII. INDIANA,	XVII. NEW-JERSEY,	XXVII. SUPREME COURT U.S.,
VIII. IOWA,	XVIII. NEW-YORK,	XXVIII. ENGLISH DECISIONS.
IX. KENTUCKY,	XIX. OHIO,	
X. LOUISIANA,	XX. PENNSYLVANIA,	

I. ALABAMA.

1. Judgment, upon default, for the amount, with interest and damages, may be rendered upon a bill duly protested, without a jury. *McKENZIE vs. CLANTON*, 33 *Alabama Reports*, 328.

2. The payee and endorser is not relieved from payment of damages by the mere fact that the bill was addressed to and accepted by him. *Ibid.*

3. The plaintiff, suing on a note, need not prove his ownership, unless it be denied under oath. *NESBITT vs. PEARSON*, 33 *Alabama Reports*, 668.

4. Where there is a condition in a note that it may be discharged in specific articles within a certain time, the time is of the essence of the contract, and after its expiration it becomes an absolute contract for the payment of money. *Ibid.*

5. A signature to a note, "A. B., Secretary of M. Co.," *prima facie* binds A. B. *DRAKE vs. FLEWELLEN*, 33 *Alabama Reports*, 106.

6. A letter containing this, "I am desirous that you should bring suit on M.'s note, on which I am surety, and would prefer that you enter suit in this county early in August, so that the principal would not have the same time to dodge," is not such a notice as will, under the Code, section 2647, discharge the surety, if the creditor neglect to sue. *SAVAGE vs. CARLETON*, 33 *Alabama Reports*, 443.

7. An endorsee, who, after execution and return of no property against the maker, pays the note upon judgment against himself, and takes it up,

can transfer a good title under which his assignee can recover of the maker, upon averment of all these steps, through which his title is made. *SMITH vs. HARRISON*, 3 *Alabama Reports*, 706.

8. The statute of limitations is a good defence to such a claim. *Ibid.*

9. In an action brought by the assignee against the maker of a promissory note, the defendant seeking to establish as a set-off a note executed by the assignor to a third person, and transferred by the latter to the defendant, a memorandum written on the latter note by the plaintiff's assignor stating that said note, if "taken up" by the defendant, should be credited on the note of the latter to him, is competent evidence for the defendant if shown to have been made before the transfer of the note sued on. *GRAYSON vs. GLOVER*, 33 *Alabama Reports*, 182.

10. In an action by the assignee against the maker of a note, an averment that the sum therein mentioned is due the plaintiff, is a sufficient averment of his ownership. *NESBITT vs. PEARSON*, 33 *Alabama Reports*, 668.

11. In an action by the endorsee against the maker, the endorsement can only be denied by a sworn plea. *SMITH vs. HARRISON*, 33 *Alabama Reports*, 706.

12. A contemporaneous collateral oral agreement executory, can be no defence to a note until performed, even though performance be impossible. *THOMPSON vs. RAWLES*, 33 *Alabama Reports*, 29.

13. If the debtor has given his note for the balance of an account fraudulently overcharged, he can defend on the notes, they being then sued on by the payees. *DICKENSON vs. LEWIS*, 34 *Alabama Reports*, 638.

14. And in this case the note was given to the successors of the firm with whom the account was contracted. *Ib.*

II. CALIFORNIA.

15. Mere extension of time, without any binding agreement to extend, does not discharge a surety on a note. *WILLIAMS vs. COVILLAND*, 10 *California Reports*, 419.

16. After maturity, a stranger guaranteed payment of the note in question within sixty days. *Held*, that this was an independent contract, and did not amount to an agreement to give the maker time, and so did not discharge a surety. *Ibid.*

17. A release of a levy on the principal debtor's property, upon his giving a new note for the amount of the judgment, is a release of a surety to the original cause of action. *MORLEY vs. DICKENSON*, 12 *California Reports*, 561.

18. Even though the note was fraudulently given and received, so that no action could be maintained on it, it operated as a contract for delay, binding until the note should be given up on account of the fraud. *Ibid.*

19. In a suit against the maker or acceptor on a bill or note, payable at a particular place, presentment at that place need neither be alleged

or proved in order to a recovery, though non-presentment, according to its tenor, may be shown in defence as affecting the damages. *MONTGOMERY vs. TUTT*, 11 *California Reports*, 307.

20. The demand must be within a reasonable time, and the notice seasonably thereafter. *BEEBE vs. BROOKS*, 12 *California Reports*, 308.

21. The institution of a suit is a sufficient demand on a note payable on demand. *ZIEL vs. DUKES*, 12 *California Reports*, 479.

22. One who signs a joint and several note in the usual form is liable to the payee as a joint promissor, and the addition of the word "surety" after his signature, does not vary that liability. *AUD vs. MAGRUDER*, 10 *California Reports*, 282.

23. Neither is it allowable for him to show a verbal agreement contemporaneous with the note, that he should be liable only, after default on the part of the other promissor, as surety. *Ibid.*

24. The only effect of the word "surety," as of such agreement, is as between the two promissors. *Ibid.*

25. A debtor giving the note of a third party in satisfaction of the debt, is not liable as guarantor of the note, but on his original debt, which has only been conditionally satisfied or extended; therefore delay in calling on him after non-payment of the note does not necessarily release him. *GRIFFITH vs. GROGAN*, 12 *California Reports*, 317.

26. Endorsers before delivery to the payee are jointly, not severally, liable, as there is no express agreement on the note making a several liability; therefore a judgment against one bars suits against the others. *BRADY vs. REYNOLDS*, 13 *California Reports*, 31.

27. One who endorses after maturity is entitled to a demand and notice. *BEEBE vs. BROOKS*, 12 *California Reports*, 308.

28. If a party fraudulently, and to secure a secret benefit to himself, ante-dates a note bearing interest, it is fraudulent as to other creditors. Our statute, section 10, applies to all evidences of debt. *McKENTY vs. GLADWIN*, 10 *California Reports*, 227.

29. A defence that the note was made payable to order, and fraudulently altered so as to be payable to bearer; that the defendant paid it before the plaintiff took it; and that the plaintiff took it overdue, is good. *SHERMAN vs. ROLLBERG*, 11 *California Reports*, 88.

30. "Mr. S., please pay the bearer, &c., and charge to my account," is a bill of exchange. *WHEATLEY vs. STROBE*, 12 *California Reports*, 92.

31. An averment that the plaintiff is owner, amounts to an averment that he is holder. *ROLLINS vs. FORBES*, 10 *California Reports*, 299.

32. A written promise that the "undersigned promise to pay J. S. S. or bearer \$100, in monthly *pro rata* instalments, out of the first net proceeds from sale of water," signed J. S. & Co., though it be not negotiable, and express no consideration, is *prima facie* proof thereof. *STUART vs. STREET*, 10 *California Reports*, 372.

33. The addition of the word "trustee" to the signature to a note does not prevent a personal liability. *CONNER vs. CLARK*, 12 *California Reports*, 168.

34. A verbal agreement, that a note signed by a trustee should be paid out of a trust fund only, would not prove that there was no consideration, but that there was no such contract as the note shows; and therefore proof of it is inadmissible. *Ibid.*

35. A note as follows, "We, the undersigned, trustees of the church, and in behalf of the whole board of trustees, promise," &c., signed with their own names, simply by two trustees, who had authority to bind the whole, binds the church, not the two signers, as the agency sufficiently appears on the face of the writing. *HASKELL vs. CORNISH*, 13 *California Reports*, 45.

36. A guarantor is entitled to the same notice as an endorser. *GEIGER vs. CLARKE*, 13 *California Reports*, 579.

37. A verbal acceptance of a bill of exchange is bad under the statute. *WHEATLEY vs. STROBE*, 12 *California Reports*, 92.

38. But a bill, though not accepted, may amount to an assignment of the whole fund in the hands of the drawee, if the bill be for exactly the amount of it. *Ibid.*

39. But in that case the payee cannot sue the drawee as an acceptor, but only on the original demand of the drawer, to whose rights he succeeds by the assignment. *Ibid.*

40. After presentation of a bill as above by the payee to the drawee, the money cannot be attached or taken by the drawer's creditors. *Ibid.*

41. One who takes a check after dishonor, takes it subject to the equities. *FULLER vs. HUTCHINGS*, 10 *California Reports*, 523.

42. After proof of illegality of consideration of a check, the holder must show that he took it for value, without notice. *Ibid.*

43. It seems, that a valid consideration for a check is *prima facie* presumed. *Ibid.*

III. CONNECTICUT.

44. Representations made by a party to induce another to endorse a note for his accommodation, however fraudulent, cannot affect a holder of the note, who took the same for a valuable consideration, before it became due, with no knowledge of the fraudulent representations. *HUMPHREY vs. CLARKE*, 27 *Connecticut Reports*, 381.

45. A note payable on its face at the F. and Mechanics' Bank was declared on as payable at the Farmers and Mechanics' Bank. *Held*, that there was no necessary variance between the allegation and the proof; that such mode of averment was the proper one, where the term was used to designate that bank, and that parol evidence was admissible to show that that bank must have been intended. *COMSTOCK vs. SAVAGE*, 27 *Connecticut Reports*, 184.

46. An executory contract for the future purchase of a judgment, to be recovered in a suit pending on a negotiable note having a blank endorsement upon it, does not affect the suit pending. *Ibid.*

47. Where a note, after it was dishonored, was delivered by the holder, endorsed in blank by the payee, to an agent of the holder to collect, under an agreement that the agent should search for property upon which to secure the note, and should bring any necessary suit in his own name, and compensate himself for his services and expenses out of the money collected, and on these facts the court below found that the legal title was conveyed, unless the law was so that it could not be conveyed in such a manner and for such a purpose, it was held, that there was no legal difficulty in the way of such a result. 29 *Connecticut Reports*, 54.

48. A party who receives an endorsed negotiable note before maturity, as security for an antecedent debt, is a *bona fide* holder, and, as such, can collect the note from an accommodation endorser. *BRIDGEPORT CITY BANK vs. WELCH*, 29 *Connecticut Reports*, 475.

49. The defendant was endorser of a bill of exchange drawn by A. on B., and accepted by B. Notice of the non-payment of the bill by the acceptor was sent by him, which described the bill as "drawn by you," and wholly omitted the name of the real drawer, but otherwise described the bill correctly, and as endorsed by the defendant. *Held*, that the notice was sufficient to charge the defendant, in the absence of proof on his part, that he had drawn any such bill, or that he had endorsed any other paper of the same general description, which could have been mistaken by him for the bill in question. *GILL vs. PALMER*, 29 *Connecticut Reports*, 54.

50. Where an endorser takes up a promissory note, after it has been dishonored, by paying the amount of it to the holder, the transaction is in effect a re-purchase of the note, and not a payment of it, and the endorser becomes vested again with all the rights which he formerly had against prior parties on the paper. *FRENCH vs. JARVIS*, 29 *Connecticut Reports*, 347.

51. Where a note, negotiated before due, is further negotiated after it has been dishonored, the holder takes the legal title, and can maintain a suit on it in his own name, in the same manner as if he had received it before it was due. *Ibid.*

52. And it is not necessary that such a holder should make a new demand upon the maker for payment, and give notice of non-payment to the endorsers. The original demand and notice enures to the benefit of all subsequent holders. *Ibid.*

IV. FLORIDA.

53. Where a promissory note has been negotiated before due, under circumstances which, at common law, would authorize an inquiry into the consideration thereof, the same inquiry may be made under a plea of failure of consideration, filed on oath under the statute. *PRESCOTT vs. JOHNSON*, 8 *Florida Reports*, 391.

54. To an action on a promissory note, given for the purchase of hogs,

a plea setting up the sale of fifty-eight head, with the delivery of twenty-five, and refusal to deliver the remainder, sets forth a valid defence as to those not delivered, as showing partial failure of consideration. *STAFFORD vs. ANDERS*, 8 *Florida Reports*, 34.

55. Where the plea of failure of consideration of a promissory note is filed under oath, according to the statute, the statute throws the onus of proving the consideration thereof upon the plaintiff. *DUPONT, J.*, dissenting. *PRESCOTT vs. JOHNSON*, 8 *Florida Reports*, 391.

V. GEORGIA.

56. A note apparently intended to be joint and several, binds one promissor, who puts it in circulation with only his own signature. *DICKERSON vs. BURKE*, 25 *Georgia Reports*, 225.

57. Upon execution against principal and surety, neither the plaintiff nor sheriff is bound, upon request, to make the money first out of the principal. *KEATON vs. COX*, 26 *Georgia Reports*, 162.

58. A distributee bought property of the intestate, and gave therefor notes with sureties, agreeing with them that his share should be retained by the administrator for their security; in ignorance of this agreement, and in good faith, the administrator bought of the distributee his share, and paid him therefor. *Held*, that the administrator had done no wrong, and that the sureties were not discharged. *HIGDON vs. BAILEY*, 26 *Georgia Reports*, 426.

59. The failure by the creditor to sue the principal within three months after notice from the surety, discharges the surety, as a matter of law; and asking for indulgence for himself, after he has given notice to sue, although before the expiration of the three months, does not revive or affect his liability. *BAILEY vs. NEW*, 29 *Georgia Reports*, 214.

60. If the surety asks indulgence from the plaintiff for himself, before the expiration of the three months after he has given the notice to sue, it will be a waiver of the notice. 29 *Georgia Reports*, 214.

61. Still, where the surety makes the above defence, the creditor may show that the surety was secured by his principal, as that tends to show that he did not give notice, because he had no motive so to do, or that he waived the notice. *Ibid*.

62. It matters not where the makers or endorsers sign, provided it appear from the note what their respective liabilities are. *QUIN vs. STERNE*, 26 *Georgia Reports*, 223.

63. A. wrote his name before delivery, on the back of a note, made payable to C. D., or bearer, and in a suit by C. D. it was held, that he appeared to be and was a joint maker. *Ibid*.

64. Under our Code parol evidence that a joint maker is only a surety, is admissible. *HIGDON vs. BAILEY*, 26 *Georgia Reports*, 426.

65. Under our statute, 1826, the endorsee must pay the face of the note, though he sold and endorsed it for less. *BENNING, J.*, dissenting. *ROARK vs. TURNER*, 29 *Georgia Reports*, 455.

66. Notice of equities is to be presumed against a transferee of an overdue note. *WILLIAMS vs. NICHOLSON*, 25 *Georgia Reports*, 56.

67. A plea in an action on notes for the price of land, that it was sold by the acre, and that there was fraud or mistake in reckoning the number of acres, is a good plea of partial failure of consideration. *HAMILTON vs. CONYERS*, 28 *Georgia Reports*, 276.

68. A note payable to M., or bearer, "for the hire of a negro man, CLEM," returned to one of two makers for failure of consideration, is *functus officio*, and worthless if re-issued by him, certainly to a taker with notice. *MICKLEBURY vs. SHANNON*, 25 *Georgia Reports*, 276.

69. A declaration in a suit by an assignee of a non-negotiable contract, may be amended by inserting the name of the obligee for the use of his assignee. *HAYNE vs. PERRY*, 25 *Georgia Reports*, 400.

70. An endorser of a note, who is the maker's executor, may be proceeded against in both characters in the same suit. *ROARK vs. TURNER*, 29 *Georgia Reports*, 455.

71. A. took the notes of his debtor in payment, arguing that in a certain contingency the notes should be given up; that agreement was held good, as a bar to an action on the notes by A. *OSBORN vs. HERRON*, 28 *Georgia Reports*, 313.

72. A., with B. as surety, made a note to C., which B. presently took up and endorsed to D., who sued A., who made no defence, but became insolvent. Held, that B. was liable to D. on the endorsement. *MONCAS vs. STACKS*, 28 *Georgia Reports*, 35.

73. Where the holder of a note, which has fallen due, agrees with the maker to give him further time to pay, in consideration that the maker will pay him usury for the extended time, and during such time the maker becomes insolvent, the endorser, if injured by such delay, is released. *STALLINGS vs. JOHNSON*, 27 *Georgia Reports*, 564.

74. A purchaser, without notice, can give a good title to one who takes from him with notice. *STAMPER vs. HAYES*, 25 *Georgia Reports*, 546.

75. A surety, who receives a note to be transferred to the creditor, and who sues on it himself, does not hold it free from the equities. *ROBERTSON vs. GLENN*, 26 *Georgia Reports*, 555.

76. And the mere fact, that the maker promised him to secure the note, does not affect the case. *Ibid.*

77. The holder of a promissory note is presumed to be a *bona fide* holder for value, without notice, and to have received it before due, unless the note be first impeached, or it be proven to have been stolen or lost. *DICKERSON vs. BURKE*, 25 *Georgia Reports*, 225.

78. A note payable out of a note on A., when collected, is not payable until A.'s note has been or could have been collected by the use of proper diligence; and the plaintiff must show that the note has become so payable, or he will be nonsuited. *WILSON vs. MORRISON*, 29 *Georgia Reports*, 269.

79. An endorser sued with the promissor, in the latter's county, may waive the issuing of a second original process against him to run into his county. *HUMPHRIES vs. McWHORTER*, 25 *Georgia Reports*, 37.

80. The record of another suit on the same note, against other parties being admitted, the objection made against its admission covers only what is properly in the record. *CHANCE vs. SUMMERFORD*, 25 *Georgia Reports*, 662.

81. And as a copy of the note is not properly part of the record, though sent up with it, it will be deemed to be admitted without objection, if not specifically objected to, and then the plaintiff need not prove the original. *Ibid.*

82. Where an action is brought against the maker and endorser of a promissory note, residing in different counties, and the writ has been regularly filed, sued out and served on the non-resident defendant, leave may be granted to perfect service on the resident defendant; and after both defendants have appeared, and filed meritorious pleas, it is too late to object to the irregularity, if it be one. *LAMAR vs. COTTLE*, 27 *Georgia Reports*, 263.

83. Where a protest is not required, notarial expenses cannot be recovered. *JOHNSON vs. BANK OF FULTON*, 29 *Georgia Reports*, 259.

84. An account cannot be pleaded as a set-off to a note given for the balance thereof; a special plea making issue on the settlement is the proper defence, if the settlement was incorrect. *BOWER vs. DOUGLASS*, 25 *Georgia Reports*, 714.

85. Slight evidence of the title to the note sued on will prevent a non-suit, the title not being denied by plea. *STAMPER vs. HAYES*, 25 *Georgia Reports*, 546.

86. Notes may be identified upon the testimony of illiterate persons, as to dates, amounts and circumstances, who saw like notes signed, but do not recognise them. *MOORE vs. MORRIS*, 26 *Georgia Reports*, 649.

87. The record of a suit against endorsers is admissible in a suit by them against the maker, to prove a recovery from them. *CHANCE vs. SUMMERFORD*, 25 *Georgia Reports*, 662.

88. Evidence is admissible to prove, that where a promissory note is dated in December and made payable on "the twenty-fifth day of December next," December instant was intended. *McCARY vs. CASKY*, 27 *Georgia Reports*, 54.

89. Though it do not appear on a note, endorsers may yet show the fact that it was payable at a bank, so as to make notice to them necessary under our statute. (*Cobb N. Dig.* 594.) *COTHRAN vs. CUNNINGHAM*, 28 *Georgia Reports*, 177.

90. Where two sets of notarial protests upon the same bill are filed under the act of 1836, both are entitled to be read without further proof by the notary. *SOUTHERN BANK, &C., vs. MECHANICS', &C., BANK*, 27 *Georgia Reports*, 252.

91. Demand on the drawer, and notice to the acceptor, are not necessary to charge the latter, though the acceptance be for the drawer's accommodation. *COX vs. MECHANICS' SAVINGS BANK*, 28 *Georgia Reports*, 529.

92. Where a bill of exchange is endorsed in full by the payees, suit cannot be maintained on it in their names while the endorsement stands. *SOUTHERN BANK, &C., vs. MECHANICS', &C., BANK*, 27 *Georgia Reports*, 252.

93. Bills are not within the statute of 1826. *COX vs. MECHANICS' SAVINGS BANK*, 28 *Georgia Reports*, 529.

94. And at common law, the acceptor, drawer and endorsers cannot be sued in the same action. *Ibid.*

95. A promise to the drawer by the drawee, to pay a non-accepted draft, is not available to a previous holder of the draft. *LUGRUE vs. WOODRUFF*, 29 *Georgia Reports*, 648.

VI. ILLINOIS.

96. One man may authorize another to sign his name, or make his mark to a promissory note, and he will be bound by it as his signature. *HANDYSIDE vs. CAMERON*, 21 *Illinois Reports*, 588.

97. Where a note is given, payable within three years from date, with interest annually at ten per cent., the payee may sue for and recover the interest at the expiration of each year. *WALKER vs. KIMBALL*, 22 *Illinois Reports*, 537.

98. Under contract of guaranty on a note, the guarantor may, if he chooses, limit his liability; if he does not do so, the general liability attaches, and protest or suit is unnecessary. *HANCE vs. MILLER*, 21 *Illinois Reports*, 636.

99. A party who endorses a note in blank, gives the holder of it a right to fill up the assignment at any time before it is offered in evidence, with any character of assignment that is usual and customary. *Ibid.*

100. Whether an unauthorized guaranty written over a blank endorsement would vitiate an assignment. *Quere? Ibid.*

101. Where it is designed to recover against the endorser of a note, action must be brought against the maker at the first following term of any court having jurisdiction, although there may not be ten days between the time the note falls due and the commencement of the term. *CHALMERS vs. MOORE*, 22 *Illinois Reports*, 359.

102. As an evidence of diligence against the maker of a note, an execution should be levied on goods, and the right of property therein tried, if the goods are in the possession of the maker. *Ibid.*

103. Diligence requires the issuance of an execution in the county where the judgment shall have been rendered. *Ibid.*

104. Property in the possession of the maker of a note should be sold

subject to the claims of others, so that the rights of parties may be ascertained. *Ibid.*

105. Notice and protest may be proved by any other competent evidence, as well as by the notarial protest. *EDDY vs. PETERSON*, 22 *Illinois Reports*, 535.

106. In an action on a note, a plea which sets up that the maker, being indebted to A., was to pay off any debts due from A.; that he gave the note sued on to B., payable to C., under the belief that A. owed B. the sum payable by the note, when the fact was otherwise, and that B. had the note endorsed after due by C. to D., who brings the action, and that no consideration passed between any of the parties, all of whom were privy to the facts, and that said note was held for the use of B., will be good on demurrer. *MERRILL vs. RANDALL*, 22 *Illinois Reports*, 227.

107. In an action on a note, a plea which sets up that the maker and payee of the note were owners of land, and that the payee took a conveyance of the land, in order to sell it on joint account, and gave the note as security for the prompt payment of the purchase-money, when the land should be sold, that it remained unsold, &c., the payee being anxious to sell, &c., is good, as showing a want of consideration. *MARSH vs. BENNETT*, 22 *Illinois Reports*, 313.

108. The omission of the words, "or order," or bearer, in the declaration upon a promissory note, does not constitute a variance. *CRITTENDEN vs. FRENCH*, 21 *Illinois Reports*, 598.

109. In an action on a promissory note, the defence set up in the plea was, that it was given in part to avoid suits upon certain alleged forged and fraudulent drafts which were endorsed by the defendant. A demurrer to the plea was overruled, with leave to plaintiff to traverse the plea. *WALKER, J.*, dissenting. *WINSTON vs. McFARLAND*, 22 *Illinois Reports*, 38.

110. In an action against an endorser, if he pleads that the maker had property liable to execution, which was known to the judgment creditor and the sheriff, and they fraudulently designed, &c., to harass the endorser, and returned an execution, no property found, it will not be demurrable. And a party, after such a plea had been overruled on demurrer, might not expect to be permitted to make proof of similar facts, under the plea of the general issue, and will, therefore, have good reason for not offering the evidence. *HAMLIN vs. REYNOLDS*, 22 *Illinois Reports*, 207.

111. If an execution is relied on, as proof of diligence used in the collection of a debt, the process should remain in the hands of the officer for its whole life; or the fact of the uselessness of its so remaining, should be pleaded. No presumption will be indulged, that the money could not be made, during the remainder of the days it had to run, after return was made. *Ibid.*

112. Where a party has purchased a reaper which had been in his use, for a less price than the value of a new machine, and has given his note for the purchase-money, he cannot defeat the payment of the note, on the

ground that a subsequent promise was made by an agent of the vendor to do some repairs to the machine. *BUNTAIN vs. DUTTON*, 21 *Illinois Reports*, 190.

113. It is no defence to an action on a note, that it was given to the payee in lieu of three other notes, given to the husband of the payee. The widow might be acting as executrix, in her own wrong, or might be the heir; in either case, the notes surrendered would be satisfied. *RILEY vs. LOUGHREY*, 22 *Illinois Reports*, 97.

114. A party to a note as surety, afterwards becoming principal to another note covering the same, with other indebtedness with a different party, may set up the defence of usury to the first note. *SAFFORD vs. VAIL*, 22 *Illinois Reports*, 327.

115. Where a note of a firm is taken in satisfaction of a claim for work and materials furnished to one of the partners, and the settlement is made in accordance with the usual mode of doing business between the parties, a mechanics' lien cannot afterwards be sustained for said work and materials. *BENNESON et al. vs. THAYER et al.*, 23 *Illinois Reports*, 374.

116. Where it appeared that A. and others gave their notes to B., to satisfy a debt due from C., and that the note was usurious, any pretence that it was otherwise will not avail the payee. *NICKERSON vs. BABCOCK*, 23 *Illinois Reports*, 561.

117. The acceptor of a bill and the drawer of a note are the principals; the endorser are sureties. *DIVERSEY vs. MOOR*, 22 *Illinois Reports*, 330.

118. Neglect to bring suit against the drawer of an accommodation bill, on request by the acceptor to do so, does not discharge the acceptor. *Ibid.*

119. An accommodation acceptor of a bill cannot set up, as a defence, that he never received any consideration. *DIVERSEY vs. LOEB*, 22 *Illinois Reports*, 393.

120. The acceptor of an accommodation or other bill of exchange is the principal debtor, and giving time to the acceptor does not discharge the maker. *DIVERSEY vs. MOOR*, 22 *Illinois Reports*, 330.

121. The assignee of a note is, in equity, regarded as the purchaser of all the securities and remedies attached to it; and may pursue them at his discretion. So may the assignees, in succession, of separate parts of the same debt. *VANSANT vs. ALMON*, 23 *Illinois Reports*, 30.

122. The assignee of the first due of several notes secured by mortgage has a priority of claim, and can foreclose and sell. The holders of the other notes can redeem in succession, according to privilege. *Ibid.*

123. A creditor by note and mortgage may pursue several remedies until his debt is satisfied. *Ibid.*

124. A judgment on a note secured by mortgage, which remains unsatisfied, is no bar to a proceeding to foreclose, or the two suits may be pending at the same time. *Ibid.*

125. A strict foreclosure of the mortgage does not extinguish the debt, unless the value of the land is equivalent to the indebtedness. *Ibid.*

126. The statute authorizing a party to prove total or partial failure of consideration of note, does not go to the extent of authorizing proof to change its terms. *WALTERS vs. SMITH*, 23 *Illinois Reports*, 342.

127. An endorser is not a competent witness to impeach a note he has assigned. *Ibid.*

128. A plea of failure of consideration to an action on a promissory note, which avers that the payee of the note was to plant a hedge, which should become a complete protection within a given time, and that it was out of the power of the payee to perform his contract, is good. *EDWARDS vs. PYLE*, 23 *Illinois Reports*, 354.

VII. INDIANA.

129. Suit by the State Bank of Indiana, for the use of the branch at New-Albany, upon a promissory note. Before the determination of the suit, the charter of the State Bank expired; but before that time, the Bank of Salem had become the purchaser of the note sued on. A supplemental complaint was filed, showing the transfer, and alleging that the note was given for the purchase-money of a certain lot, sold by the State Bank to the defendant, and that a deed has been tendered before suit was brought, which had been handed over to the Bank of Salem. *Held*, that the right to keep up and make good the tender, by a delivery of the deed, passed to the Bank of Salem, as an incident to the assignment of the note. *THE BANK OF SALEM vs. CALDWELL*, 16 *Harrison*, 469.

130. Suit upon notes made in Ohio, and payable with 10 per cent. interest. Judgment for the amount of the notes, with the stipulated interest. *Held*, that as the notes were payable generally, they were payable everywhere, and not specially at the place of residence of the makers. *ENGLER et al. vs. ELLIS*, 16 *Harrison*, 475.

131. If the notes were payable in this State, they would still be good for the stipulated interest, unless that rate was prohibited by the law of Ohio, which was not made to appear. *Ibid.*

132. Where the endorsee of a promissory note alleges in his complaint that the note was endorsed to him by the payee, and sets out a copy of the note, with a blank endorsement, he may, on the trial, fill up the endorsement, or may recover without filling it up. *MOORE vs. PENDLETON et al.*, 16 *Harrison*, 481.

133. Where an assignee of a promissory note alleges an assignment of the note to him by endorsement, he must set out a copy of the endorsement to him with his complaint. *CONNARD vs. CHRISTIE*, 16 *Harrison*, 427.

134. Where, in a suit by the payee of a promissory note, the note is given in evidence, the defendant may give in evidence endorsements of payments thereon, though unsigned, without proof of the handwriting in

which they are made; the burden being on the plaintiff, from whose possession the note comes, to explain by whom, and for what purpose, the endorsements were made. *BROWN vs. GOODEN*, 16 *Harrison*, 444.

135. Suit by an assignee upon a promissory note. The complaint averred that the defendant executed the note to the payee, who endorsed it to the plaintiff. *Answer*: That the endorsement of the note was without consideration, and for the purpose of avoiding answers to interrogatories, and that the plaintiff had no interest in the note. *Held*, that the legal conclusion from the averments of the complaint was, that the legal ownership of the note was in the plaintiff, and it was not enough for the defendant to controvert this legal conclusion, without specially controverting the facts upon which it rested, or showing other facts inconsistent therewith; as that the real interest remained in the payee, or had passed from the plaintiff to a third person. *ELDER vs. SMITH*, 16 *Harrison*, 466.

136. But where the maker is informed that the note has been already purchased, and promises the assignee to pay it, he is not estopped to contest its validity, as the promise could not have been intended to induce the purchase, even though it should appear that the note was not, in fact, purchased until afterwards. *MORRISON et al. vs. WEAVER et al.*, 16 *Harrison's (Indiana) Reports*, 344.

137. Suit against the owners of a steamboat upon certain bills and notes made and accepted by the master, and purporting to have been given for the use of the boat, for insurance, &c. *Held*, that *prima facie* the master had no authority to bind the owners to the payment of the bills or notes. *HOLCROFT et al. vs. WILKES*, 16 *Harrison*, 373.

138. He had no right as master, though himself a part owner, to insure for the other joint owners. *Ibid*.

139. Suit against the makers and endorsers of a promissory note, made and payable in Illinois. *Held*, that as the note was not payable to order or bearer in a bank in this State, no cause of action was shown, under our law, against the endorsers. *BROWN vs. BUNN*, 16 *Harrison*, 406.

140. If the endorsements were made in Illinois, and governed by the law of that State, such law should have been pleaded. *Ibid*.

141. The court, sitting as a jury, may infer from the face of a note payable "at the branch at Fort Wayne of the Bank of the State of Indiana," that it was intended to be payable at the "Branch at Fort Wayne of the Bank of the State of Indiana." *MILLER et al. vs. POWERS et al.*, 16 *Harrison*, 410.

142. Suit upon a promissory note. *Answer*: That the note was given for a part of the purchase money of a saw-mill, and the assignment of a subscription for the purpose of rebuilding the same; that the vendor represented that the mill and machinery were perfect, and the subscription valid, and worth \$300. That in fact the mill, machinery and subscription were of no value to defendant, and the note sued on was the last one given. *Held*, that the answer was bad on demurrer. *THOMPSON vs. VOSS*, 16 *Harrison*, 297.

143. Where promissory notes are pleaded as a set-off, a replication denying the defendant's title to the notes, and particularly setting out the facts showing the title to be in another, is good. *REILLY et al. vs. RUCKER, Executrix*, 16 *Harrison*, 303.

144. Where a lease of land is for a term within the statute of frauds, and for that reason required to be in writing, and the lessee executes notes to the lessor for the rents, and takes possession of and occupies the premises leased during the term, the question whether the contract could have been enforced if either party had refused to perform it before the expiration of the term, is not involved, and the lessee is liable to pay the notes. *GIBSON et al. vs. WILCOXEN*, 16 *Harrison*, 333.

145. Where the maker of a promissory note, being informed that a third person is about to purchase the note, promises to pay it within a given time, and thereby induces the purchase, he is estopped from contesting its validity. *MORRISON et al. vs. WEAVER et al.*, 16 *Harrison*, 344.

146. As the evidence is not in the record, this court cannot say that any thing was shown tending to impeach the returns; and if not, they might, when legitimately in evidence, be taken as conclusive in the given case. *DAWSON vs. WALLS*, 16 *Harrison*, 269.

147. Suit upon a promissory note. *Answer*: That the note was given to the payees thereof, at the request of one A., in settlement of an affair of bastardy; she, the said A., being then pregnant with a child begotten by one of the makers of said note; that a large sum, to wit, five hundred dollars, had already been paid, and that said bastard child died at birth. *Held*, that the mother being pregnant at the time of the execution of the note, had then a present right of action, and her promise not to bring the action was a good consideration for the note, which the death of the child did not in any degree affect. *HARTER et al. vs. JOHNSON*, 16 *Harrison*, 271.

148. Where an assignee takes a note, upon the representation of the maker that it will be paid, or is good, the latter is estopped to defend against the payment of the note. *WRIGHT vs. ALLEN*, 16 *Harrison*, 284.

149. The possession of a note by the payee is *prima facie* evidence that he is the owner of it, although there may be on the note a special endorsement of it by him to a third person; and he may, if he thinks proper, strike the name of such endorsee from the note. *MENDENHALL et al. vs. BANKS*, 16 *Harrison*, 284.

150. Where, at the time of the execution of a note not governed by the law-merchant, but still negotiable, third persons place their names on the back of it, in the absence of the prior endorsement of the payee, their liability is *prima facie* that of endorers; and there would be no variation in this rule when applied to notes negotiable by the law-merchant. *SNYDER vs. OATMAN et al.*, 16 *Harrison*, 285.

151. Where endorers place their names upon the back of a negotiable note at the time of its execution, in the absence of the prior endorsement of the payee, perhaps parol evidence is admissible to rebut their *prima facie* liability as endorers, and show it to be that of makers; but where

the payee first endorses the note, evidence is not admissible to rebut such *prima facie* liability of the subsequent endorsers. *Ibid.*

152. Suit by the assignee of a promissory note against his assignor, alleging the insolvency of the maker. A judgment had been obtained on the note against the maker, and executions returned *nulla bona*, but due diligence had not been used in bringing the suit. *Answer*: That diligence had not been used against the maker of the note, who, long after the time when a judgment might have been obtained against him, had property subject to execution. The executions issued on the judgment against the maker, and the returns of the officer, were offered in evidence, and objected to by the assignor, on the ground of irrelevancy. *Held*, that as it does not appear but that the judgment on which the executions issued was given in evidence without objection, and as the executions and returns might tend to show insolvency at a given, though immaterial time, the court cannot say the evidence did any harm. *DAWSON vs. WALLS*, 16 *Harrison*, 269.

153. E., as trustee of Indian Creek Township, having obtained a judgment against F. and G., upon which an execution had been issued and a levy made, took from them and others, as their sureties, a note for the amount of the judgment, conditioned that the sale on the execution should be postponed until the maturity of the note, and that payment of it should satisfy the judgment. *Held*, that the trustee, being entrusted by statute with the management of the pecuniary concerns of the township, had power to make the agreement. *PHILIPS et al. vs. EAST, Trustee, &c.* 254.

154. The payment of the note, or of the judgment obtained thereon, would authorize satisfaction to be entered on the original judgment. *Ibid.*

155. The master of a boat has no power, simply as such, to endorse or execute bills and notes binding the owners. *HOLCROFT et al. vs. HALBERT*, 16 *Harrison*, 256.

156. Notes payable to order, but not at a bank in this State, though negotiable, are not governed by the law-merchant as to diligence against makers and rights of defence. *SNYDER vs. OATMAN et al.*, 16 *Harrison*, 265.

157. The expression, "Chartered Bank," was inadvertently used in *Mix vs. THE STATE BANK*, 13 *Indiana Reports*, 521, in stating what notes are put by the statute on the footing of inland bills of exchange. *Ibid.*

158. Where the names of endorsers appear upon a note without any date, the endorsements will be presumed to have been made at the date of the note. *Ibid.*

159. The makers of the note were estopped to deny the legal existence of the State Bank of Ohio at the time the note was given. *HALL vs. HARRIS*, 16 *Harrison*, 180.

160. In a suit by the assignee of a promissory note against the maker, a judgment recovered against the maker as garnishee in an attachment proceeding against the payee or any prior holder of the note, may be pleaded in bar of the suit, if the judgment was rendered before the maker had notice of the assignment. *SHETLER vs. THOMAS*, 16 *Harrison*, 223.

161. Suit upon a promissory note. *Answer*: That the note was given in consideration that plaintiff had repaired, and would further repair, a threshing machine, and that he had failed, though often requested to make such repairs. *Held*, that the place of making the repairs would be the shop of plaintiff, and the answer should have shown that the machine was placed there, and the repairs requested. *MOUNTJOY vs. MULLIKIN*, 16 *Harrison*, 226.

162. Where a party places his name upon the back of a negotiable promissory note, creating a liability in favor of the payee, the presumption is that he intends to assume the liability of an endorser, and nothing more; but this presumption may be controlled by parol evidence, showing that he, in fact, intended to assume the liability of a maker, in which case he will be regarded as a joint maker. *SILL et al. vs. LESLIE*, 16 *Harrison*, 236.

163. Where a party is shown to have signed a note as a surety, he may be charged as a joint maker. *Ibid*.

164. Where the maker of a promissory note is inquired of by a person proposing to take an assignment of the note, as to the validity thereof, and answers that he has no defence against it, he is estopped from setting up any defence against such person or his assignee. *ROSE vs. TEEPLE*, 16 *Harrison's (Indiana) Reports*, 37.

165. The consent of the endorser of a promissory note that suit against the maker may be postponed, need not be in writing, nor based on a consideration, in order to continue the liability of the endorser. *FREN vs. KIERSTEAD*, 16 *Harrison*, 91.

166. Where time has been granted, and the license is afterward revoked by the endorser, the endorsee must bring suit against the maker within a reasonable time after notice of such revocation; as the case then stands, as to future time, as if no such consent had been given. *Ibid*.

167. Suit for the foreclosure of a mortgage. *Answer*: That the notes and mortgage, though executed to the plaintiff alone, were given for goods purchased of a mercantile firm of which plaintiff was a member; that the other co-partners had never assigned their interest in the debt to plaintiff, and that the real beneficial interest therein was in said firm. *Held*, that the defendant was estopped, by the execution of the notes and mortgage, to plead the matters set up in his answer. *FRENCH et al. vs. BLANCHARD*, 16 *Harrison*, 143.

168. Suit upon a promissory note, dated at Piqua, Ohio, and payable at the branch of the State Bank of Ohio at that place. *Held*, that the note bore on its face presumptive evidence that it was made in Ohio. *HALL vs. HARRIS et al.*, 16 *Harrison*, 180.

169. A notarial protest is presumptive evidence of the manner and time of presentment as stated therein, and is therefore evidence in a suit on the bill. *DICKERSON vs. TURNER*, 12 *Indiana Reports*, 223.

170. It is a question of law, to be discussed only after it has been admitted, whether the facts therein stated are a good presentment. *Ibid*.

171. And evidence *aliunde* is admissible to show circumstances which made the particular form of presentment adopted and stated, good and legal. *Ibid.*

172. *It seems*, that mere accommodation drawers are entitled to notice of protest, even though there were never any funds or credits in the drawer's hands, if they expected their principal, also as a drawer, to provide funds. *Ibid.*

173. The admission by an accommodation drawer that he is liable as surety, and that the debt is just, is evidence of sufficient protest and notice. *Ibid.*

174. The Indiana statute, giving five per cent. damages on any bill of exchange drawn upon any person out of the State, does not apply to a bill drawn in the State of Ohio. *CAMPBELL vs. SWASEY*, 12 *Indiana Reports*, 70.

175. An admission by one joint-drawer, even though an accommodation drawer, of his liability on the bill, thus impliedly admitting sufficient demand and notice, binds his co-contractors, the bill itself showing a joint contract. *DICKERSON vs. TURNER*, 12 *Indiana Reports*, 223.

176. But an admission, *in pais*, by a drawer, (not evidence given in the case by him,) that the other defendant is the principal drawer, will not authorize an order to the sheriff to satisfy the execution first out of the goods of the alleged principal drawer. *Ibid.*

177. 2 Revised Statutes, page 44, section 81, as to defences against assignees of notes, applies only to *bona fide* assignees. *HUBLER vs. PULLEN*, 12 *Indiana Reports*, 567.

178. A. gave his note, dated April 1st, 1852, to B., with C. as surety. In November, 1856, C. gave B. written notice to sue the note. But A. had then left the State, and he never returned to it, but died in Ohio, leaving no property, and having no administrator in Indiana. At the second term of the Court of Common Pleas, after receiving the notice, B. sued C. C. defended, on the ground that he had not been sued at the first term after notice; but it was *held*, that the notice to sue did not operate as a requirement to sue the surety; that a suit against the surety was not necessary to secure any rights against the principal, as he could have paid the note at any time without suit, and then proceeded against the principal. Neither was the payee bound, upon notice, to follow the principal out of the State. *ROWE vs. BUTCHELL*, 13 *Indiana Reports*, 381.

179. A promissory note, payable at a bank out of this State, is not governed by the law-merchant, like a bill of exchange, but the separate remedy against the maker must be exhausted before the endorsers will become liable, unless there be an excuse for failure to seek such remedy, which excuse, if it exist, must be duly alleged. *MIX vs. STATE BANK*, 13 *Indiana Reports*, 521.

180. Although the endorsee of a promissory note, assignable under the statute, is not allowed to sue the endorser, unless he has used due diligence against the maker for the recovery of the note, still he may allege

and prove an excuse for not using such diligence. *MARSHALL vs. PYEATT*, 13 *Indiana Reports*, 255.

181. A. agreed to erect for B. a building, to be wholly completed by November 1st, 1856. B. advanced to A., at the same time, \$2,000, and A. gave his note for that amount, with C. as surety, with the agreement, that the completion of the building according to the contract should be accepted in satisfaction of the note. Subsequently, without the knowledge of C., a further agreement was made between A. and B., that A. should put an additional story on the building for a further consideration, but the time was not extended; and in a suit on the note against C., the surety, it was *held*, that the second contract so increased the difficulty and expense, and tended to delay the completion of the first, as to materially affect its execution, and so the surety was discharged. *ZIMMERMAN vs. JUDAH*, 13 *Indiana Reports*, 286.

182. Time given to a principal in a promissory note, without the consent of the surety, upon a void, usurious contract, does not discharge the surety. *GOODHUE vs. PALMER*, 13 *Indiana Reports*, 457.

183. Where, contemporaneously with the transfer of a note by the payee, other parties write their names under his signature, they become thereby liable as endorsers, and parol evidence is not admissible to vary their liability. *VORRE vs. HURST*, 13 *Indiana Reports*, 551.

184. To a suit by the assignees on a promissory note, the answer was payment to the assignor and set-off before assignment, and that when the defendants paid and satisfied the note, as previously set forth, the assignor was owner, and promised to deliver it to the defendants, but did not, so that the plaintiff had not any legal title thereto, with a prayer, that the assignor might be made a party. *Held*, that the last paragraph was bad as an answer, and that issue need not be taken on it, because it was, at most, a repetition of the two former defences; that it was bad as a petition for the joinder of the assignor, as a new party could not be joined, in order to settle a controversy between him and the defendants, in which the original plaintiffs had no interest, and that it was not proper to join him without good cause, as the plaintiffs would thereby be deprived of an important witness, otherwise competent. *FREAR vs. BRYAN*, 12 *Indiana Reports*, 343.

185. An answer, that the note sued on had been delivered by the plaintiff to A., with authority to collect and apply it to a debt by the plaintiff to him, and therefore that the plaintiff is not the owner, is good. *GILLESPIE vs. FORT WAYNE, &c., RAIL-ROAD COMPANY*, 12 *Indiana Reports*, 398.

186. A general plea of failure of consideration is bad. *SMITH vs. BAXTER*, 13 *Indiana Reports*, 151.

187. Unauthorized credits endorsed upon a promissory note may properly be obliterated by a payee. *BURTCH vs. DENT*, 13 *Indiana Reports*, 542.

188. Under the laws of Indiana an endorsee may bring a joint action

against the immediate and remote endorsers. *MARSHALL vs. PYEATT*, 13 *Indiana Reports*, 255.

189. A complaint on two promissory notes, concluding "that the same remain due and unpaid, plaintiff therefore demands judgment for \$800," was held sufficient. *GAGE vs. WOODRUFF*, 13 *Indiana Reports*, 293.

190. To a suit on a note, the answer was, that it had been assigned before suit to one COOPER, whose Christian name was to the defendant, unknown, and interrogatories to the plaintiff were filed, by which, and by which alone, as the defendant alleged, he could prove the allegation, and he thereupon asked a continuance until the interrogatories could be answered, which was refused. *Held*, that the answer was uncertain and bad, and the judgment was sustained. *DOYLE vs. WATT*, 12 *Indiana Reports*, 342.

191. In an action on a note given for goods purchased, an answer that part of the goods were injured and of no value, is bad, without an allegation of fraud or warranty; or that part of the goods were never received, or are wanting, is bad, unless it be also alleged, that this is through the fault of the plaintiff. 13 *Indiana Reports*, 151.

192. If, in a suit by an endorsee against immediate and remote endorsers jointly, the complaint, to show failure of consideration, averred that the defendants had due notice of the suit against the makers, an answer, traversing such allegation, is good. *MARSHALL vs. PYEATT*, 13 *Indiana Reports*, 255.

193. A. sold land and took in part payment a note payable to B., who assigned the note, with notice of the consideration, to C., at whose request the maker afterwards took back the note, and gave in exchange two smaller ones. In a suit on one of these the maker set up the defence, that the title to the lands, for which it was given, had failed in part. This was held a good defence. *BRAY vs. PEARSELL*, 12 *Indiana Reports*, 334.

194. A sale of liquors in 1856 is a good consideration for notes. *HOLMES vs. EBERSOLE*, 12 *Indiana Reports*, 392.

195. Where the treasurer of an insurance company drew orders upon the company, which were accepted by the secretary, although such orders were void, as being intended to circulate as bank bills, it was nevertheless *held*, that one who, at the request of the treasurer, redeemed such orders, might recover the amount of a promissory note given him by the treasurer, to reimburse him for the money advanced for such redemption. *WRIGHT vs. HUGHES*, 13 *Indiana Reports*, 109.

196. It is not a sufficient answer to a suit on a promissory note, that it was given for services rendered and materials furnished in the preparation of a lottery which the plaintiff knew to be illegal. *HIGGINS vs. MINER*, 13 *Indiana Reports*, 346.

197. A complaint against an endorser must allege demand and notice, or an excuse therefor. *BLACKLEGE vs. BENEDICT*, 12 *Indiana Reports*, 389.

198. A. drew a bill of exchange upon the firm of A. & Co., in favor of C., which C. endorsed to A. & Co., and they to the bank. Suit by the receiver upon the bill. Answer by A. and C. that the bill was executed and discounted for the use of A. & Co., and that C. was only an accommodation endorser; that at the time the bill became due, and before the appointment of the receiver, the bank was indebted to A., for the use of A. & Co., in the sum of \$250, for money had and received for their use; and in a further sum of \$250, for money deposited by one T., for the use of A. & Co. *Held*, that the answer substantially alleged the indebtedness to be due from the bank to A. & Co. *LARRIMORE et al. vs. HERON, Receiver, &c., 16 Harrison's (Indiana) Reports, 350.*

199. As A. & Co. were the principal debtors, an indebtedness from the bank to them could be set off against the bill sued on; and the statute allows the defence to be made by the principal or any other defendant. *Ibid.*

200. Suit by an endorsee of a promissory note against a remote endorser, alleging the insolvency of the makers. *Answer*: That at the time of making the endorsement, defendant took from his endorsee a writing, showing that the note was assigned without recourse. The court instructed the jury, that a party receiving a negotiable note or bill of exchange, before maturity, in good faith, in the usual course of business, and without fraud, is not bound by equities which exist between the parties, of which he had no notice. *Held*, that the instruction was erroneous. *MARCH et al. vs. SHELDON, 16 Harrison, 491.*

201. Where the drawee of a bill of exchange accepts the bill, the presumption is that he has funds of the drawer in his hands to the amount of the bill, but that presumption may be rebutted. *DICKERSON et al. vs. TURNER et al., 15 Harrison, 4.*

202. The drawee may show that he accepted and paid the bill for the accommodation of the drawer, and the law will then imply an undertaking on the part of the drawer to indemnify the acceptor, who, on such implied obligation, may have his action against the drawer. *Ibid.*

203. If one of several drawers of a bill joins in it as principal, and the others as sureties for him, and the drawee, with a knowledge of these facts, accepts and pays it, without any funds of the drawers in his hands, there is an implied obligation on the part of all the drawers, sureties as well as principal, to indemnify him, and he may have his action against them all, as for money paid to their use. *Ibid.*

204. The contract of the drawer of a bill of exchange, as to its construction and legal effect, is to be governed by the law of the place where the bill is drawn; that of the acceptor, by the law of the place where the bill is payable. *HUNT et al. vs. STANDART et al., 15 Harrison, 33.*

205. A party may purchase a bill of exchange at any rate of discount; but if it be shown that the transaction was not in its inception real, but a mere device to evade the statute against usury, the money advanced will be regarded as a loan. *VAIL vs. HEUSTIS, 14 Tanner's (Indiana) Reports, 607.*

206. Where the bill was drawn by a partner upon the firm, to his own order, and accepted by him in their name, and endorsed to another, the question whether the payee could maintain a suit upon it at maturity is immaterial in determining the character of the transaction. *Ibid.*

207. Payments made by the drawer of a bill of exchange, after the dishonor of the bill, are, at least, *prima facie* evidence of his liability thereon. *WASHER vs. WHITE et al.*, 16 *Harrison's (Indiana) Reports*, 136.

208. Suit by the payees of a bill of exchange against the drawer and acceptor, the bill having been endorsed by the payees and returned unpaid. The drawer answered, that he, together with the said payees, were sureties for the acceptor, and known to each other as such, and that he had paid his contributive share to the holder. The court instructed the jury that the drawer was liable to reimburse the payees, notwithstanding he may have been only an accommodation drawer, and that the plaintiffs, as endorsers, having mutually contributed to pay the bill, could, by mutual consent, have their names inserted as payees in the blank left for the name of the payee. *Held*, that the instruction was erroneous, for assuming that the plaintiffs were not original parties to the bill, but endorsers only, and that a blank had been left in the bill, as to the name of the payee, which was filled up after its dishonor. *KORTEPETER et al. vs. LIST*, 16 *Harrison*, 295.

209. If a bill or note be endorsed as collateral security, that is an adequate consideration to enable the party to sue thereon, though he advanced no new credit on the bill or note. *ROWE vs. HAINES*, 15 *Harri-*
son, 445.

210. The assignment of promissory notes, secured by mortgage, carries with it the mortgage security. *GARRETT vs. PUCKELL*, 15 *Harrison*, 485.

211. A. assigned to B. two promissory notes on C., in consideration of which B. executed to A. his two promissory notes. Contemporaneously with this transaction, a written agreement was entered into between the parties, by which B. undertook not to enforce the collection of C.'s notes, until the notes given by him to A. should be demanded in writing; and A. bound himself not to transfer B.'s notes. Suit by B., alleging that A. had transferred his notes; that C. was insolvent, and his notes worthless, and that he had made no effort to collect the same; offer to surrender the notes of C. to A., and prayer that his, B.'s notes, might be surrendered and cancelled. *Held*, that the notes of B. were based upon a good consideration, and that the agreement between the parties did not make the liability of B. to pay his notes dependent upon his enforcing the collection of the notes of C. *MORTON vs. NOBLE*, 15 *Harrison's Reports*, 508.

212. If either party had violated the agreement, an action would lie by the other to recover whatever damages he may have sustained; but such breach would not affect the right of the other party to the notes given or transferred to him. *Ibid.*

213. A. could legally transfer the notes of B., and the agreement could not affect the validity of the transfer. *Ibid.*

214. Where three of five notes had been paid with usurious interest,

and suit was brought upon the remaining two, which were not usurious, the court deducted the usurious interest paid upon the former notes, with ten per cent. thereon, and gave plaintiff costs. *Held*, correct. *BEAUCHAMP vs. LEAGAN*, 14 *Tanner's (Indiana) Reports*, 401.

215. If A. sell goods to B. and C., and take their notes for payment, a wager between B. and C. to determine which shall pay the notes, A. not being a party to the wager, cannot affect A.'s right of action against them.

216. Payments, in order to extinguish a bill of exchange, must be made to the real owner of it. *WOODWORTH vs. ELLIOTT*, 13 *Indiana Reports*, 516.

217. A mere averment, in an answer to a suit on a bill of exchange, that the plaintiffs are the agents of the payees, and therefore liable to equities, is insufficient, as it may have been passed to them in payment; it should be averred that they are agents for the collection thereof. 13 *Indiana Reports*, 567.

218. An answer setting up that the bill was for goods sold with warranty, which has been broken, and that the plaintiffs took with knowledge of the warranty, is bad, as it should also allege knowledge of the breach. *Ibid*.

219. In a suit by the assignee of a promissory note against the maker, an answer averring that the assignor is the real party in interest, without setting up facts to show such to be the case, is bad on demurrer, and interrogatories based upon such an answer will be struck out. *LUNG et al. vs. SIMS et al.*, 14 *Tanner's (Indiana) Reports*, 467.

220. A complaint on a promissory note, averring the loss of the note, with an affidavit of its loss and contents, is sufficient, without a copy of the note. *CLEVELAND vs. ROBERTS*, 14 *Tanner*, 511.

221. Where the trial in such case was by the court, *Held*, that the affidavit was *prima facie* sufficient evidence of the loss of the note; and that, with the testimony of a witness to the contents, would support a finding for the plaintiff. *Ibid*.

222. A rail-road company have power to take notes, originating in a transaction, or to secure an indebtedness, within the scope of their corporate undertaking; and as a general proposition, a corporation has power to assign a note that it has power to take. *HARDY vs. MERRIWEATHER*, 14 *Tanner's Reports*, 203.

223. Representations that the company have stock enough to complete the road, and would do it in two years, are too vague to constitute a defence to a suit on notes given for an instalment of a subscription. *Ibid*.

224. Suit upon a note. *Answer*: Without oath, denying the execution of the note. Demurrer sustained. *Held*, that the answer made a good issue, but did not put the plaintiff upon proof of the execution of the note. The demurrer to it was erroneously sustained. *WADE vs. MUSSELMAN*, 14 *Tanner's (Indiana) Reports*, 362.

225. In a suit upon a note by an assignee, he should aver in his com-

plaint the mode in which the assignment in the given case was executed; because if it was by delivery, he must make the assignor a party; but if it was by endorsement, he need not. *BARCUS et al. vs. EVANS*, 14 *Tanner's Reports*, 381.

226. The makers of a promissory note to an infant cannot plead the infancy of the payee in a suit against them by his endorsee. *FRAZIER et al. vs. MASSEY*, 14 *Tanner*, 382.

227. Suit by the assignee upon notes. *Answer*: Want and failure of consideration, and fraud. *Reply*: Estopped in pais in this, that plaintiff took the assignment of the notes for a consideration paid, and upon a representation of defendant, made during the negotiation therefor, that the notes were valid. It did not appear that plaintiff purchased them on the faith of the representation. It did appear that they were given upon an executory consideration, and that the services had not been performed at the time of the assignment, which plaintiff knew; and that he also knew the notes were obtained by fraud. *Held*, that the estoppel was not established. *BLACK vs. MITCHELL*, 14 *Tanner's Reports*, 397.

228. A written promise to pay a sum of money was assignable by endorsement under the statute of 1838; and, therefore, where no consideration for the promise was expressed, it was held that a valid consideration must be presumed. *TIBBETTS vs. THATCHER*, 14 *Tanner's (Indiana) Reports*, 86.

229. Where a person purchases property, and is to have a delay of payment upon executing his notes, if he fails to execute his notes the purchase, money is due immediately. *HAYS vs. WEATHERMAN*, 14 *Tanner's (Indiana) Reports*, 341.

230. The execution of a note to a corporation admits its corporate character. *BLAKE vs. HOLLEY*, 14 *Tanner's (Indiana) Reports*, 383.

231. A corporation may authorize its proper officer to assign a note by delivery. Perhaps it would be within the general power of the officers of a rail-road company to assign, in such manner as they deemed expedient, the choses in action of the company. *Ibid*:

232. The fact that the charter of a corporation is annulled, after a note sued on has been legally assigned, would not deprive the plaintiff of a right already vested by a legal assignment of the note when the company was possessed of the power to make such assignment. *Ibid*.

233. In a suit upon a promissory note given for the purchase-money of land, an answer setting up a failure of title, without showing breach of covenant or fraud, is bad on demurrer. *LAUGHERY vs. MCLEAN*, 14 *Tanner's Reports*, 106.

234. If, in a suit on a promissory note, the consideration for a part of which the note was executed, was an agreement to convey a valid and clear title to land, which was not complied with, there is a failure of consideration, to the extent that the defendant has paid to perfect his title; and hence the amount may be set up in defence, without regard to any question of notice of the time of assignment. *HOLMAN vs. CRAIGMILES*, 14 *Tanner's (Indiana) Reports*, 177.

235. A promissory note given for a conditional subscription of stock, is a waiver of the condition. *O'DONALD vs. THE EVANSVILLE, &c., RAILROAD COMPANY*, 14 *Tanner's (Indiana) Reports*, 259.

236. Such a note, given some time after the date of the subscription, cannot be viewed as a part of the contract of subscription. *Ibid.*

237. The taking of collaterals, to secure the payment of a promissory note, does not bar a suit upon it. *MILLS et al. vs. GOULD et al.*, 14 *Tanner's (Indiana) Reports*, 278.

238. Where A. sells property to B., and B., by agreement, executes his notes to C., the latter is entitled to sue on the notes; and B. will not be allowed to set up the want of interest in the note of C. at the time it was executed. *STEVENS vs. SONGER*, 14 *Tanner's Reports*, 312.

239. The consideration for the assignment of a note need not be necessarily paid at the time, to render the assignment complete. *WOLF et al. vs. SMITH*, 14 *Turner's Reports*, 360.

240. Promissory notes payable to order, or bearer, in a bank in this State, are alone made negotiable as inland bills of exchange. And a note payable to bearer, but not in a bank in this State, though negotiable, is subject to whatever defence or set-off, the maker of such note had before notice of assignment. *WOODWARD et al. vs. MATHEWS*, 15 *Harrison's (Indiana) Reports*, 339.

241. A written contemporaneous agreement, showing the consideration and conditions upon which a promissory note was given, may, in a suit upon the note, be given in evidence as part of the same contract. *Ibid.*

242. The administrator of the legal holder of a note has the right to assign it. *SPEELMAN vs. CULBERTSON*, 15 *Harrison*, 441.

243. So, in a note payable to A. as the administrator of B., the words "Administrator, &c.," may be regarded as *descriptio personae*, and a valid transfer be made by A. *Ibid.*

244. A. transferred a note to B. by delivery, for a debt which was less than the amount of the note, and directed that the difference should be paid to his, B.'s wife. *Held*, that the equitable title to the note passed to B. by the transfer, and he could sue upon it without joining his wife as plaintiff. *Ibid.*

245. A promissory note was transferred by the following endorsement: "I assign the within note to A., to secure him as security to B." *Held*, that the endorsement was sufficient to vest the title to the note in A., and to enable him to transfer the note to another. *ROWE vs. HAINES*, 15 *Harrison*, 445.

246. If there is no evidence to show where the endorsement was made, or where the note was delivered, the contract of endorsement is presumed to have been made in this State; and this as well where the payee is a foreign corporation, as a natural person. *ROSE vs. PRESIDENT, &c., THAMES BANK*, 15 *Harrison's (Indiana) Reports*, 292.

247. Suit upon a note, a part of which was payable in a specific arti-

cle. *Held*, that the instrument was a promissory note, assignable by statute. *FINK vs. MAPLES*, 15 *Harrison*, 297.

248. Suit upon a note, given for a retainer, and for services to be rendered by an attorney at law, in a certain prosecution for perjury. Subpoenas were issued for defendant's witnesses, and a consultation held as to the sufficiency of the indictment, which resulted in the discovery of a defect, which being suggested to the prosecutor, he entered a *nolle prosequi*. The defendant pleaded a failure of consideration. *Held*, 1. That the retainer of the attorney was a good consideration for the promise to pay the stipulated amount. 2. That as the attorney did all that was required of him in the premises, and was not in default in the performance of his part of the contract, he was entitled to recover the amount of the note; and evidence of the value of the services rendered was properly rejected. *PENNINGTON vs. NAVE et al.*, 15 *Harrison's (Indiana) Reports*, 323.

249. In a suit by an assignee upon a promissory note, alleged to have been endorsed to him by the payee, the averment of an endorsement must be sustained by proof of a written endorsement, the assignor not being made a defendant. *STOWE vs. WEIR*, 15 *Harrison*, 341.

250. Suit upon notes, and the mortgage by which they were secured. While still holding the notes and mortgage, the payee had given his due bill for a small amount to the payer. *Held*, that though the giving of the due bill was *prima facie* evidence of a settlement of accounts, yet such presumption was rebutted, as to the payment of the notes, by the fact that the notes and mortgage were outstanding, and not surrendered or cancelled. *SPENCER vs. CHRISMAN*, 15 *Harrison's (Indiana) Reports*, 215.

251. A promissory note is *prima facie* evidence of a settlement of accounts to its date. *GASKIN vs. WELLS et al.*, 15 *Harrison*, 223.

252. Suit upon several promissory notes. *Answer*: That plaintiff's assignor, at the time of making the assignment of the notes sued on, took from plaintiff a written agreement not to enforce the collection of the notes assigned until all had matured; that the last of said notes had not yet matured. *Held*, that the assignment and delivery of the notes vested an absolute title thereto in the plaintiff, and the agreement, while it might bind him to his assignor, and subject him to damages for its breach, could not make the transfer of the notes conditional, or furnish the defendant with a defence to the several notes as they matured. *SMITH vs. GRABILL*, 15 *Harrison*, 267.

253. A promissory note might, under the old system of practice, be equitably assigned without endorsement, so as to vest the equitable interest in the assignee, and entitle him to proceed upon it in equity; and by our present statute he can sue in his own name. *KIMBALL et al. vs. WHITNEY et al.*, 15 *Harrison*, 280.

254. In order to make a note, signed in the individual name of one of the partners, binding upon the firm, it must be made to appear affirmatively that it was given and received as a firm note, binding upon all the partners. *HUBBELL et al. vs. WOOLF et al.*, 15 *Harrison's Reports*, 204.

255. A., by his note, promised to pay to B. \$500, in good notes, "which," as the note expressed it, "is to be due in eighteen months from this date." *Held*, that the notes in which payment was to be made were intended by the expression, "which is to be due in eighteen months," and that suit would lie on the note of A. before the expiration of that time; parol evidence not being admissible to establish a different interpretation. *WADE et al. vs. DARROW*, 15 *Harrison*, 212.

256. Suit upon a promissory note. *Answer*: That the note was given for the purchase-money of real estate, sold by the plaintiff, and that afterward the contract was cancelled and the real estate re-conveyed; the vendor releasing all liability for the purchase-money. *Held*, that it sufficiently appeared from the answer, that the note sued on had been cancelled. *CALDWELL vs. WARD et al.*, 15 *Harrison's (Indiana) Reports*, 214.

257. The contract of endorsement of a promissory note is governed by the law of the State where the endorsement is made. *ROSE vs. PRESIDENT, &c., OF THAMES BANK*, 15 *Harrison*, 292.

258. The assignor, in such case, impliedly warrants that the notes have not been paid to him; yet if they have, in fact, been paid to him, he is not liable on the contract of assignment, but only for the consideration received by him for the transfer. *FRENCH vs. TURNER*, 15 *Harrison's Reports*, 59.

259. Where a subscription to the stock of a rail-road company was conditioned, that it should not be payable until work should be commenced on a given point named, it is a condition precedent to the right to demand the subscription; and a note given for the subscription, on the false representation that the condition had been complied with, is void. *TAYLOR vs. FLETCHER*, 15 *Harrison*, 80.

260. Where, in a suit on a promissory note, there is no denial, but only affirmative answers, it is not necessary that the plaintiff should give the note in evidence. *MESMORE et al. vs. VANPELT et al.*, 15 *Harrison*, 138.

261. It is not necessary, in order to evidence the husband's consent to the transfer of a promissory note, the separate property of his wife, that he should join in the endorsement; but such consent may be shown by other evidence. *COLLIER et al. vs. CONNOLLY*, 15 *Harrison*, 141.

262. It is no defence to a promissory note, given for the purchase-money of land, and payable before the time for the making of the deed, that the vendor has no title to the land. *WYLEY vs. HOWARD*, 15 *Harrison*, 169.

263. In this State, promissory notes, payable in a bank in this State, are alone placed on the footing of bills of exchange, and governed by the law-merchant. *HUNT et al. vs. STANDARD et al.*, 15 *Harrison's (Indiana) Reports*, 33.

264. The maker of a promissory note, made in one State and payable

in another, will be held liable according to the law of the place where it is payable. *Ibid.*

265. An endorser of a promissory note undertakes that he will, upon certain implied conditions, pay the note, not at the place where the note is payable, but generally. And his contract is governed by the law of the place where the endorsement is made, and not by the law of the place where it is payable. *Ibid.*

266. To hold a party as an endorser of a promissory note, the endorsement must have been made thereon; or, perhaps, on another paper annexed thereto, when there are many successive endorsements. *FRENCH vs. TURNER*, 15 *Harrison*, 59.

267. A transfer in writing made upon a mortgage, of "the within mortgage, and the notes therein described," does not convey the legal title to the notes; though, under our code, the assignor might sue thereon in his own name; nor does the assignor, in such case, warrant the solvency of the maker of the notes. *Ibid.*

268. An averment that, by agreement with the maker, the plaintiff fraudulently put off the trial from term to term, without notice to the defendants, and without their knowledge or consent, by means whereof the defendant lost the benefit of the assignment to him, &c., was held bad, where it was not applicable to the case made by the complaint. 13 *Indiana Reports*, 255.

269. An answer in an action on a promissory note, made payable to the wife, alleging that the consideration was the sale of land owned and conveyed jointly, by husband and wife, that a sum equal to the amount of the note had been paid in cash, and that the two had given their joint bond of indemnity against defects in the title, and the husband's interest had been sold, on execution, was held to state a good defence. *BEVINS vs. PRATHER*, 13 *Indiana Reports*, 392.

270. In an action upon the assignment of a promissory note secured by mortgage, if the appraisement law is not waived, a sale of the property of the maker of the note, upon the judgment without appraisement, is a nullity, and will furnish no defence. *CUMMINGS vs. PROUTS*, 13 *Indiana Reports*, 144.

271. In a suit against the surety on a promissory note, given on a usurious contract, he may prove in defence payments of the usurious interest made by the principal. *GOODHUE vs. PALMER*, 13 *Indiana Reports*, 457.

272. In a suit on a promissory note, payable in "good judgments on good men," the value of the judgments is the true measure of damages. *PIERCE vs. SPADER*, 13 *Indiana Reports*, 458.

273. The defendants by the style of *PRATT & Co.*, made their note to *BOWSER & STOREY*, for \$201, payable out of the mill and warehouse, as the payees might order. The note was assigned to G. Suit by G., alleging that he demanded payment out of the mill and warehouse of the defendants, who refused to pay, &c. The defendants answered,

that at all times since they made the note, they had been, and still were, ready and willing to discharge the same, at their mill and warehouse, with such chattels as they had therein for vending purposes. The evidence showed that G. had demanded payment in flour, and had been answered that they had no flour then on hand. *Held*, that the ambiguity of the note was sufficiently explained by the averment that it was payable out of the mill and warehouse of the defendants. *Held*, also, that the holder of the note was entitled to demand payment in such articles, the usual manufacture of the mill, or usually kept in the warehouse, as he might elect to receive. *PRATT et al. vs. GRAFF*, 15 *Harrison's Reports*, 1.

274. *Held*, also, that the answer of the defendants was not a valid defence to the action; that to make the defence good, it should have been averred that the defendants were ready to pay, &c., out of the mill and warehouse, in such articles herein, for vending purposes, as the plaintiff should order. *Ibid*.

275. *Held*, also, that the answer of the defendants to the demand of payment in flour, without an offer to pay in other property, or in the article demanded at some subsequent reasonable time, was, in effect, a refusal to pay the note. *Ibid*.

VIII. IOWA.

276. The plaintiff, being the payee and in possession of the note sued on, will be presumed to be rightfully in possession, and the assignments on the back will be taken to have been properly erased. *GODDARD vs. CUNNINGHAM*, 6 *Clarke's (Iowa) Reports*, 400.

277. In an action on a promissory note, to which the defence was usury, the question was as to the identity of the note. The testimony failed to describe the note in some particulars, but was correct in other material matters. It also appeared that the defendant owed the plaintiff no other note. *Held*, that the note was sufficiently identified. *SNELL vs. KIMMELL*, 8 *Clarke's (Iowa) Reports*, 281.

278. The defendant was not allowed to prove, that at the time of making an ordinary endorsement on a promissory note, it was agreed that the endorsee should not be liable, and that the plaintiff's counsel advised the defendant that the form in which it was made did not render him liable. *SANDS vs. WOOD*, 1 *Clarke's (Iowa) Reports*, 263.

279. Where, the defendant being in default for want of an answer, and a jury having been empanelled to assess the damages, the plaintiff asked for judgment, without producing the note or accounting for its absence, and thereupon the defendant moved for a nonsuit, it was held that the motion was properly overruled. *Ibid*.

280. A verdict, "for the note and interest," is good, and the court may order the clerk to reduce it to form by casting the interest, &c. *STEVENS vs. CAMPBELL*, 6 *Clarke's (Iowa) Reports*, 538.

281. The rights of two joint promissors to a note may not be the same as regards the payee, and, therefore, after a joint defence, trial and verdict against them, a new trial may be granted for one, and not neces-

sarily for the other also. *GORDON vs. PITT*, 3 *Clarke's (Iowa) Reports*, 385.

282. Under the code, section 970, the notice from a surety to the creditor, requiring him to sue the principal debtor, must be in writing. *STEVENS vs. CAMPBELL*, 6 *Clarke's (Iowa) Reports*, 538.

283. A blank endorsement creates the same liability from the endorser to the endorsee as a full one. *BEAN vs. BRIGGS*, 1 *Clarke's (Iowa) Reports*, 488.

284. A note to A. and B. was endorsed, "I assign all my rights, &c., to the within to A.," signed B. Held, that *prima facie*, without proof of the identity of the two B.'s, A. was the owner, and the defendant must controvert the ownership by plea. *KNIPPER vs. CHASE*, 7 *Clarke's (Iowa) Reports*, 145.

285. The endorsement of a non-negotiable note is a direct and positive undertaking to pay, and, therefore, the ordinary demand and notice is not necessary to charge an endorser of such a note. *LONG vs. SMYSER*, 3 *Clarke's (Iowa) Reports*, 266. *WILSON vs. RALPH*, *Ibid.*, 450.

286. And it is not improper for the assignee to write over a blank endorsement of a non-negotiable note a promise to pay without demand and notice. *Ibid.*

287. A certificate, dated "A. B. has deposited in this bank \$100 to his order, payable two months after date, to his order, on return of this, with interest at six per cent.," is a negotiable instrument, and A. B. is liable to an endorsee on his blank endorsement. *BEAN vs. BRIGGS*, 1 *Clarke's (Iowa) Reports*, 488.

288. Provisions in a promissory note relating to bonds given as collateral security for its payment, do not defeat its negotiability. *KNIPPER vs. CHASE*, 7 *Clarke's (Iowa) Reports*, 145.

289. The note containing an authority to the payee to sell certain collaterals, if they would bring a certain price, but imposing no obligation to make the sale, it was held, that the offering the collaterals for sale was not a condition precedent to the right to enforce payment. *Ibid.*

290. And that a clause providing, that upon failure to pay at maturity, the collateral should be forfeited, "or the said payee may, at his option, return the collaterals to the payee, and sue him," did not make their return, or sale, and the crediting of the amount on the note, a condition precedent to the right to recover. *WOODWARD, J.*, dissenting. *Ibid.*

291. "I promise to pay, forty days after date, \$100, due for certain work, with six per cent. interest." This note being subject to deduction, by "showing certain overcharges in certain bills," it was held, that this was a good note, and good for the whole amount, unless the defendant proved what deduction should be made. *GREEN vs. AUSTIN*, 7 *Clarke's (Iowa) Reports*, 521.

292. The making of a note in settlement is *prima facie* evidence that the amount of the note was fairly due; and if the maker would enjoin the

collection of the note, he must adduce evidence enough to overcome the sworn answer of the defendant, the payee. *HERSHE vs. DELANEY*, 7 *Clarke's (Iowa) Reports*, 496.

293. In this case there had been an award between the parties, but uncertain in its terms, and disputed as to its effect. *Held*, that the complainant, who averred that a certain sum, less than the face of the notes, was found due thereon, must prove that averment in the first instance, and that it was not for the defendant to disprove it. *Ibid*.

294. Where the maker of a note, payable at his option, in specific articles or in money, is ready to deliver the articles, and notifies the payee to that effect, who refuses to receive the articles, such obligation cannot be recovered upon as a money demand, or its payment as such enforced, without a subsequent demand upon the maker for the property, as such refusal to receive dispenses with the necessity for further tender or delivery. *WILLIAMS vs. TRIPLETT*, 3 *Clarke's (Iowa) Reports*, 518.

295. In an action against the maker and endorsers, the notice was, "You are hereby notified that there is now on file in," &c., a petition of A. B., claiming of you the sum of \$108, as money due on a promissory note, and it was held sufficient to apprise the endorsers of the claim against them. *DAVIS vs. BURT*, 7 *Clarke's (Iowa) Reports*, 56.

296. The payee wrote on the back of a note over due, "I sign the within note, for value received, to E. H." *Held*, in a suit against him on the note, that he stood in the relation of a principal, and that it was not necessary for the plaintiff to prove diligence on his part or demand on the maker, and notice of non-payment. *HALL vs. MONOHAN*, 6 *Clarke's (Iowa) Reports*, 216.

297. The defendants publicly promised to redeem the notes of a certain bank at their counter; presently they "stopped payment" of them: in an action on some of these notes, it was held, that the plaintiff need not aver presentation and refusal to pay as to the specific notes sued on, but that the averment of readiness was to be set up by the defendants. *TARBELL vs. STEVENS*, 7 *Clarke's (Iowa) Reports*, 163.

298. Section three of the act, entitled "an act relating to evidence," approved January 24, 1853, adopts the rule of the commercial law, in relation to the presentment of bills and notes for payment, and repeals the rule laid down on that subject by section 957 of the Code. *EDGAR vs. GREER*, 8 *Clarke's (Iowa) Reports*, 394.

299. The presentment of a bill of exchange, or promissory note, for payment, before the last day of grace, is premature, the instrument not being due until then. *Ibid*.

300. A note which shows upon its face that it is void as given in pursuance of an illegal contract, is not admissible in evidence. *CRAIG vs. ANDREWS*, 7 *Clarke's (Iowa) Reports*, 17.

301. A petition on a note for the amount and interest, claims interest only from the commencement of the suit. *BARTON vs. SMITH*, 7 *Clarke's (Iowa) Reports*, 85.

302. An omission, in an action by the original payee, to allege that the note has become his property, is not fatal; certainly if not objected to until at the trial. *BUSICK vs. BUMM*, 3 *Clarke's (Iowa) Reports*, 63.

303. Statute January 24th, 1853, chapter 108, provides, that execution of a promissory note sued on need not be proved, unless specifically denied under oath; but a denial of the execution under oath raises an issue thereon, and is good on demurrer, though the want of the oath throws the burden of proof upon the defendant, and makes the production of the note sufficient *prima facie* evidence of its execution. *LYON vs. BUNN*, 6 *Clarke's (Iowa) Reports*, 48. *SEACHRIST vs. GRIFFETH*, *Ibid.*, 390.

304. When, in an action on a promissory note, the defence is that the note is the property of another, and not of the plaintiff, this should appear affirmatively in his pleading. *ALLEN vs. NEWBERRY*, 8 *Clarke's (Iowa) Reports*, 65.

305. Where, in such action, the answer "denies that the plaintiff holds against him any such notes as are described in his petition," such a denial, without more, relates to the time of commencing the action, and means only that it is denied that plaintiff holds such notes as are described. *Ibid.*

306. The maker of a note, sued by the payees, set up as a defence that T., being indebted to him, it was agreed that T. should pay the note, charging the amount to the defendant's account, and that the plaintiffs agreed to release the defendant and look to T. alone, but the note was not given up. *Held*, that though T. might be bound, yet that the contract was not complete as to the defendant, and, therefore, was no defence, until payment by T., because it was only then that he was released from his liability. *BURROWS vs. ROBERTSON*, 7 *Clarke's (Iowa) Reports*, 100.

307. In an action on a promissory note, it is not a defence that, after suit brought, the claim and judgment which may be recovered thereon had been assigned, without endorsement on the note, to a third person, not made a party to the suit. *ALLEN vs. NEWBERRY*, 8 *Clarke's (Iowa) Reports*, 65.

308. Where the property in a promissory note is transferred during the pendency of a suit upon it, there is no legal objection to the substitution of a new plaintiff; but in such a case, the rights of the defendant remain unaffected, and his defence unabridged. *FERRY vs. PAGE*, 8 *Clarke's (Iowa) Reports*, 455.

309. Under act of January 24, 1853, it is not necessary to prove an assignment of a note unless it is denied by defendant under oath. *SANDS vs. WOOD*, 1 *Clarke's (Iowa) Reports*, 263.

310. The signature of a guarantor, on the back of a note, need not be proved unless denied under oath. *PARTRIDGE vs. PATTERSON*, 6 *Clarke's (Iowa) Reports*, 514.

311. A promissory note is not over due until the days of grace have expired; and the *bona fide* endorsement of a note on the second day of grace will cut off any equity or set-off which the maker may have against the payee. *GOODPASTER vs. VORIS*, 8 *Clarke's (Iowa) Reports*, 334.

312. A. kept accounts with B., and was indebted to him; he sent him a letter, "enclosed please find C. D.'s certificate of deposit for \$945, which, when matured you will please collect and place the amount to my credit," enclosing the certificate. *Held*, that it appeared that B. received it as agent of A. only, for collection, and not even as security for the old debt, and, therefore, was not a *bona fide* endorsee. *JOHNSON vs. BARNEY*, 1 *Clarke's (Iowa) Reports*, 531.

313. Where, in an action on a promissory note, the defendant answered, admitting the execution of the note, and averring that it was given in part payment for eighty acres of land, conveyed by plaintiff to defendant, by deed dated April 22, 1854; that plaintiff had no valid title to the land at the date of the deed, but that the title to the same was in one S., who had subsequently given notice to defendant to quit the possession of the land; that defendant, to prevent eviction, had been compelled to purchase the land from S., and had paid him \$700 therefor—of all which the plaintiff had notice; and that, therefore, the consideration of said note had wholly failed; to which answer was appended the deed of the plaintiff, purporting to convey to the defendant two tracts of land, amounting to 240 acres, and containing the usual covenants, and to which answer a demurrer was sustained, it was held, that the demurrer was improperly sustained. *BRANDT vs. FOSTER*, 5 *Clarke's (Iowa) Reports*, 287.

314. The maker of a note conveyed land to a trustee as security; the trustee sold properly, but the land did not bring enough to pay the note. In an action on the note, by an assignee thereof, for the balance due, the maker defendant offered to show that the land was worth much more than the amount of the note, in order to charge the plaintiff with the conversion thereof. The evidence was held inadmissible under the pleadings in the case, but *it seems*, that the land being sold according to the deed of trust, the maker was liable for all loss on the sale, and the plaintiff was accountable only for the actual proceeds. *EWING vs. SCOTT*, 2 *Clarke's (Iowa) Reports*, 447.

315. Where, in an action on a promissory note in the name of the payee, it appears that a third person is beneficially interested in the debt, the defendant may be let in with any defence he may have against the third person so beneficially interested, although the suit is brought in the name of the person having the legal title to the note. *FARWELL vs. TYLER*, 5 *Clarke's (Iowa) Reports*, 535.

316. The time of payment of a promissory note may be extended by parol, and, in such case, an action will not lie on the note until the expiration of the time of extension. *COX vs. CARRELL*, 6 *Clarke's (Iowa) Reports*, 350.

317. The objection, that the plaintiff had no title to the notes sued on, cannot be made for the first time on a motion in arrest; it should be made at the trial, so that the plaintiff could prove his title. *GORDON vs. PITT*, 3 *Clarke's (Iowa) Reports*, 385.

318. Final judgment cannot be rendered in an action on a note, unless it be produced, or its absence be accounted for. *BRANDT vs. FOSTER*, 5 *Clarke's (Iowa) Reports*, 287.

IX. KENTUCKY.

319. A note, signed by R. as surety, and delivered to the promisor to be filled up by him, is good against the surety, even if not filled up by the promisor, as proposed to the surety, unless the payee is affected with knowledge of the error. *JONES vs. SHELBYVILLE, &C., INSURANCE COMPANY, 1 Metcalfe's (Kentucky) Reports, 58.*

320. Where parties sign a note upon the condition that other signatures are to be obtained thereto, and the payee has knowledge of this fact, they are not liable thereon, unless such signatures be obtained. *COFFMAN vs. WILSON, 2 Metcalfe's (Kentucky) Reports, 542.*

321. Plaintiff declared upon a note executed by D. to him, payable at the Northern Bank of Kentucky, at Covington, and upon which the names of F., N. and C. were by them endorsed in blank, at and before its delivery, whereby, as alleged, "they intended to be equally bound as obligors." It was not alleged that they endorsed the note, as accommodation endorers, or with the view of having it discounted at the bank where it was made payable, or for the purpose of guaranteeing its payment. *Held*, upon demurrer, that the petition did not show a cause of action against the endorers. *KELLOGG vs. DUNN, 2 Metcalfe's (Kentucky) Reports, 215.*

322. And that, in such case, parol evidence was not admissible to show that the endorers of the note endorsed it for the purpose, and with the intention of becoming bound thereon as obligors, but that the liability of an endorser or guarantor being consistent with their position, such liability might, upon proper allegation, be established by parol proof of a corresponding intention on their part. *Ibid.*

323. A contract for the indulgence made by the assignee of a joint and several promissory note with the principal debtor, without the assent of the surety, does not release the latter, unless the assignee had knowledge at the time of so doing that he was surety. To make the defence available, such notice must be alleged and proved. *NEEL vs. HARDING, 2 Metcalfe's (Kentucky) Reports, 247.*

324. Where parties make an instrument which is assignable, and upon the contract itself hold themselves out as principals, they are to be regarded and treated, both by the assignor and assignee, as occupying the attitude of principals, unless the holder has knowledge that some of them are the sureties of the others. *Ibid.*

325. The assignee of a note must have execution, and a return of *nulla bona* out of the circuit court, as well as out of the quarterly court, under the Code, section 846, and the statute of 1858, before he can have recourse to the assignor, as land cannot be levied on under an execution from a quarterly court. *BARKER vs. CURD, 1 Metcalfe's (Kentucky) Reports, 641.*

326. It is a want of diligence on his part, precluding him from recourse to the assignor, that he has not attempted to reach the equitable assets of the debtor. *Ibid.*

327. If the obligor of a note authorize the obligee to raise money to pay

the note, and he does so, the obligor is not responsible for usurious interest paid, although he authorized it to be paid, or, knowing it to have been paid, sanctioned or approved it. *TOTTEN vs. COOKE*, 2 *Metcalfe's (Kentucky) Reports*, 275.

328. When the note was filed with the petition, an averment that the defendant was "indebted to the plaintiff in the sum of \$779 78, due by note herewith filed," was held sufficient to make the note part of the petition. 2 *Metcalfe's (Kentucky) Reports*, 275.

329. It is a good answer to an action on a note for hire of a slave, that the slave was unsound, diseased, and of no value, and rendered no service. *GRISWOLD vs. TAYLOR*, 1 *Metcalfe's (Kentucky) Reports*, 228.

330. In an action against a defendant constructively served, the plaintiff need not, on default, prove the execution of the note sued on, for it proves itself, and the Code, section 439, does not apply. *GILL vs. JOHNSON*, 1 *Metcalfe's (Kentucky) Reports*, 649.

331. The production of the note, transferable by delivery, is, in such a case, sufficient proof of the plaintiff's ownership. *Ibid.*

332. The Kentucky statute, (Revised Statutes, chapter 22, section 6,) relative to assignment of choses in action, does not apply to bills of exchange. *KELLY vs. SMITH*, 1 *Metcalfe's (Kentucky) Reports*, 313.

333. The judgment on a bill of exchange is for the principal, and interest to the time of judgment. *Ibid.*

334. Under our statute, making bills payable in current funds negotiable, such a bill may be declared on as a bill payable in money. *MORRISON vs. TATE*, 1 *Metcalfe's (Kentucky) Reports*, 569.

335. The law in favor of negotiable paper presumes that the endorsement was made before it became due, and that the holder acquired the same in the usual course of business, for value. These presumptions may, however, be repelled by evidence, where an inquiry in relation thereto is admissible between the parties to the action. *ALEXANDER vs. SPRINGFIELD BANK*, 2 *Metcalfe's (Kentucky) Reports*, 534.

336. A creditor who receives negotiable paper from his debtor, merely as collateral security for an antecedent debt, and parts with nothing of value, is not regarded by the law-merchant as paying for it a valuable consideration, and does not acquire a title to it superior to that of the lawful owner. If, however, he receives it in payment of an antecedent debt, without any notice of the defect in the title of the person from whom he receives it, he has a right to hold it against the real owner, though the transfer was made without authority. *Ibid.*

337. A note sued on was not fully described in the petition, as its date was not stated, but its amount, and the time it was payable, were stated, and it was alleged that the defendant was indebted to the plaintiff in the amount thereof, the whole of which was unpaid; and the note was filed with, and made part of the petition. Held, that the petition was sufficient. *TOTTEN vs. COOKE*, 2 *Metcalfe's (Kentucky) Reports*, 275.

338. To charge an assignor on the implied contract of assignment of a

legal demand, the legal remedies must be diligently pursued. The legal remedy on a note secured by mortgage should be as diligently prosecuted as if the security did not exist. And this rule of law is unaffected by section 406, Kentucky Civil Code. Two months' delay is unreasonable. *CHAMBERS vs. KEENE*, 1 *Metcalfe's (Kentucky) Reports*, 289.

339. A note, negotiable by its terms, payable at the branch of the Bank of Louisville, in Flemingsburg, and endorsed to and discounted by the Bank of Ashland, is, by the charter of the latter, placed upon the same footing as a foreign bill of exchange; and where it is taken up by the person who endorsed it to the bank, (if he be an innocent holder,) such an act does not deprive the paper of the character and properties which it possessed in the hands of the bank; and in an action by him, against the antecedent parties to the note, no defence thereto, by way of set-off or counter-claim, arising out of the contract between such antecedent parties, concerning which the note was executed, can be allowed. *SPENCER vs. BIGGS*, 2 *Metcalfe's (Kentucky) Reports*, 123.

340. A banker who held notes for collection pledged them for an antecedent debt. *Held*, that the pledgee could not hold them against the owner, as he had given up no right nor valuable thing, nor had he incurred any liability on the strength of them. *LEE vs. SMEAD*, 1 *Metcalfe's (Kentucky) Reports*, 628.

341. A bill was dishonored at A.; the endorser lived a few miles from A., but always got his letters at "A." post-office. Notice was sent by mail to him at "A." post-office; the notice was held sufficient. *BONDURANT vs. EVERETT*, 1 *Metcalfe's (Kentucky) Reports*, 658.

342. Although the holder of a bill of exchange, payable a given number of months after its date, is not bound to present it to the drawee for acceptance until it becomes due, yet, if he does present it for acceptance, and the bill is dishonored, he is bound to give due notice to those whom he intends to hold bound for its contents. *LANDRUM vs. TROWBRIDGE*, 2 *Metcalfe's (Kentucky) Reports*, 281.

343. A promise to pay, by drawer and endorser, made after a bill becomes due, is considered an admission of regular presentment for payment, and of due notice, or at least waives the objection that it has not been done. But if the bill has been presented for acceptance before it falls due, and has been dishonored, there is no inference that a party who promises to pay after the bill falls due knew of the refusal to accept, or of the neglect to give notice of such non-acceptance. Such promise does not furnish presumptive evidence, even, of the presentment and notice. *Ibid*.

344. The place of acceptance of a bill of exchange is the place of contract, and the law of that place is the law of the contract. *KELLY vs. SMITH*, 1 *Metcalfe's (Kentucky) Reports*, 313.

345. Assumpsit will not lie on an instrument having all the forms of a bill of exchange, except the drawer's name, against the acceptor or endorser. *SIMPSON J.*, dissenting. *TEVIS vs. YOUNG*, 1 *Metcalfe's (Kentucky) Reports*, 197.

X. LOUISIANA.

346. The acceptor of a bill has no right to inquire into the consideration between the drawer and payee, and between the latter and a subsequent endorsee. *SMITH vs. ADAMS*, 14 *Louisiana Annual Reports*, 409.

347. Nor even accommodation acceptors, known to be such by the payee, have a right to plead in compensation or remuneration a debt due by payee to the drawer of a draft. *Ibid.*

348. A subsequent payment will not render the attachment valid. *TODD vs. SHOUSE*, 14 *Louisiana Annual Reports*, 426.

349. The acceptance of a bill of exchange admits the genuineness of the drawer's signature; and where an acceptor has paid to a *bona fide* holder of a forged draft or bill, having no notice of the forgery, he cannot recover back the money paid. *McKLEROY vs. SOUTHERN BANK, &C.*, 14 *Louisiana Annual Reports*, 458.

350. Where a party became the holder of a forged draft, before it had been accepted and paid, and the acceptors, immediately upon ascertaining the fact of the forgery, gave notice of this fact to the holders, it was held, that such a case was an exception to the general rule, and that the acceptors were not estopped from proving the forgery and recovering the money they had paid through error. *Ibid.*

351. The stipulation by a surety on a promissory note, that the holder shall exhaust all the legal remedies against the drawer of the note, before having recourse upon such surety, amounts to a simple reservation of the right of discussion, and has no other effect. So that, where it is shown that the drawer is, and has been for a considerable time, insolvent, that he has left the State without leaving any property, and that it is impossible, from the circumstances of the case, that the plaintiffs could make any thing by proceeding against such drawer, an action by the holder against the surety will lie immediately. *SHELDON vs. REYNOLDS*, 14 *Louisiana Annual Reports*, 692.

352. It cannot affect the negotiability of a note that its consideration is to be realized in future, or that from some contingency it may never be realized. *SADLER vs. WHITE*, 14 *Louisiana Annual Reports*, 177.

353. Where a promissory note has been transferred by a verbal contract, without the endorsement of the payee, such verbal transfer cannot have the effect of an endorsement, and give the paper a character of negotiability. *SCOTT vs. McDUGALL*, 14 *Louisiana Annual Reports*, 309.

354. The holder of a note made payable to the maker's own order, by him endorsed, and secured by a notarial and authentic act of mortgage, may recover without any authentic evidence of transfer further than that contained in the act itself. *RICE vs. DAVIS*, 14 *Louisiana Annual Reports*, 435.

355. In a suit against the maker of a promissory note, in confirming a judgment by default, it is not necessary that the signature of the maker should be proved. *KEARNEY vs. FENNER*, 14 *Louisiana Annual Reports*, 870.

356. Where the name of one of the partners, who is sued on a note of the firm, does not appear, either in the firm name or in the return of citation, the fact of his being a partner must be proved, to entitle the plaintiff to confirm a judgment by default against him. *Ibid.*

357. When the obligation is conditional, the party to whom it is transferred by endorsement before maturity is bound to prove the performance of the condition before he can recover on it. *DRAWN vs. CHERRY*, 14 *Louisiana Annual Reports*, 694.

358. Bills of exchange drawn in a foreign country, although drawn against a shipment made to the city of New-Orleans, are governed by the laws of the country where they are drawn. *KUENZIE vs. ELVERS*, 14 *Louisiana Annual Reports*, 391.

359. In the absence of proof in a suit brought upon such bills here, which have been protested for non-acceptance and payment, the laws of the country where such bills were drawn, with regard to bills drawn there upon other foreign countries, must be presumed to be the same as our own and ten per cent. damages will be allowed. *Ibid.*

360. When the plaintiff is the payee of the note sued on, he may strike out or not his special endorsement of the note, and is not bound to show a transfer back to himself. *COOPER vs. COOPER* 14 *Louisiana Annual Reports*, 685.

361. Where a promissory note, made payable to the order of a firm, is endorsed by each member of the firm separately, in the absence of proof to the contrary, the payees will be presumed to be commercial partners, and each bound by his endorsement for the whole amount of the note. *BELL vs. MASSEY*, 14 *Louisiana Annual Reports*, 831.

362. A waiver of protest by an endorser is not a waiver of the notice of non-payment. *BALL vs. GREAUD*, 14 *Louisiana Annual Reports*, 305.

363. An accommodation endorser is entitled to notice as any other endorser. *Ibid.*

364. If the consideration of the note had not failed at the time of its transfer, the maker cannot set up as a defence, that the holder knew that there might be offsets against it. *SADDLER vs. WHITE*, 14 *Louisiana Annual Reports*, 177.

365. A judgment by default, taken in a suit on a note by a party claiming the ownership of it, by the blank endorsement of the payee, does not relieve the plaintiff from the necessity of proving the endorsement. *COLLINS vs. McDONALD*, 14 *Louisiana Annual Reports*, 735.

366. The notary certified that he went to the office of the acceptors of the bill in order to demand payment for it, and found the office shut, and, on inquiry, could not find the acceptors, nor any one who could pay the bill. *Held*, that it should be presumed, in the absence of proof to the contrary, that the notary had the draft with him, and that he went to make the demand within the usual office hours. *BANK OF LOUISIANA vs. SATTERFIELD*, 14 *Louisiana Annual Reports*, 80.

367. A notice sent to the post-office, where an endorser usually receives his letters, at the time the protest is made, is sufficient, although there be another post-office nearer his residence, at which he is not in the habit of receiving his letters. *GRIEFF vs. McDANIEL*, 14 *Louisiana Annual Reports*, 160.

368. In a suit brought against a drawer, it is not necessary to constitute a waiver of want of notice, that an express promise be made to pay the bill absolutely; it is sufficient, if by reasonable intendment the language imports or implies a promise to pay it, as a promise to pay if the costs are thrown out. *ZACHARIE vs. KIRK*, 14 *Louisiana Annual Reports*, 433.

369. Checks are assimilated to bills of exchange, and the same rules govern both with regard to the necessity of demand, protest, and notice of protest. *SUCCESSION OF KERCHEVAL*, 13 *Louisiana Annual Reports*, 457.

370. A bank is liable to the payees of a check made payable to their order, when the check is paid on a forged endorsement made by the collector of the payees, who receives the check in payment of a bill of merchandise intrusted to him for collection by his employers. *VANBIBBER vs. BANK OF LOUISIANA*, 14 *Louisiana Annual Reports*, 481.

371. Where, at the maturity of a draft, the firm on which it was drawn, in the city of New-Orleans, had no place of business, and could not be found there, and had then ceased to exist as a firm, it was held, that a protest was unnecessary to bind the drawer. *HELM vs. MIDDLETON*, 14 *Louisiana Annual Reports*, 484.

XI. MAINE.

372. Where one defends a suit upon a note to which his name has been affixed by a third person, if it appear that the defendant had given such third person authority to make notes, and put thereon his name as a party thereto, and to put notes thus executed into general circulation, as bearing his genuine signature, and had not, at the date of the note in suit, revoked such authority, and the agent, acting under such authority, executed the note in suit, and passed it to the plaintiff as bearing the genuine signature of the defendant, and it was received by the plaintiff as such, the defendant will be bound thereby. *FORSYTH vs. DAY*, 2 *Hubbard's (Maine) Reports*, 176.

373. Such authority is *express*, when directly conferred on the agent by the principal, either verbally or in writing; and *implied*, when it arises from facts and circumstances, admitted or proved, which cannot be explained upon any other supposition than that of authority, and from which the existence of authority may reasonably be inferred. *Ibid.*

374. If an officer of an insurance company transfers a promissory note in violation of law, whether the maker (the company or its creditors interposing no claim to the note) can plead such illegal transfer in defence, unless he is a creditor of the company. *Quere?* *LITCHFIELD vs. DYER*, 2 *Hubbard's (Maine) Reports*, 31.

375. But if the payer of such a note is himself a creditor of the company, he may contest the legality of such transfer, in order to avail himself, by way of set-off, of the existing equities between himself and the company. *Ibid.*

376. The promissory note of a town, given for money borrowed, with interest payable semi-annually, the principal "to be redeemable at the pleasure of the town after ten years from date," should not be so construed as to give to the town the right to retain the money perpetually; the design and intention of the restriction being to limit the right to pay the note until the ten years had expired. And after the expiration of the ten years, the payee may legally enforce payment. *HATHAWAY, APPLETON and CUTTING, JJ.*, dissenting. *CHADWICK vs. PORTLAND, 2 Hubbard's (Maine) Reports, 44.*

377. When an agent takes a promissory note for his principal, payable to himself, and then transfers it to his principal, such principal stands in the position of the original holder, and the note in his hands is subject to whatever defences might have been made to it in the hands of the agent. *HUTCHISON vs. HUTCHISON, 2 Hubbard's (Maine) Reports, 154.*

378. There may be a ratification and an adoption of a forged note, by the person whose act it purports to be, although he has derived no benefit therefrom; and such ratification binds him from the date of the note. But the language or acts relied on to establish such ratification, must be such as to indicate his intention to be holden to pay the note. *FORSYTH vs. DAY, 2 Hubbard's (Maine) Reports, 176.*

379. Where such a note has been presented to the apparent maker of it for payment, who did not repudiate it, but deceived its holder by language and acts calculated to induce a reasonable belief that the note was genuine, although, thereby, he may not be regarded as adopting the note as his own, still, he will be estopped from denying his liability thereon, if the holder, acting upon the belief thus created, has suffered damage, or neglected to enforce any remedy he might have had against any other party. *Ibid.*

380. Other notes which had been previously executed in the same manner, which had been shown and described to the defendant before the date of the note in suit, and which he had acknowledged to be valid, are admissible in evidence as bearing on the question of authority on the part of the agent; and also, as indicating the degree of confidence which had been reposed in him on the part of the defendant. *Ibid.*

381. And proof that the plaintiff took the note in suit, as having thereon the signature of the defendant, executed by *himself*, and did not suppose it had been placed there by any other person for him, will not render such notes inadmissible in evidence. *Ibid.*

382. If an agent having money in his hands belonging to his principal, voluntarily intermingles it with money belonging to himself, or to other persons, and, on being sued therefor, defends on the ground that the money was stolen from him, without fault or negligence on his part, the burthen of proof is on him to show that the identical money was stolen which belonged to his principal. *BARTLETT vs. HAMILTON, 2 Hubbard's (Maine) Reports, 435.*

383. A promissory note, payable on demand, which was negotiated within thirty days after its date, to a *bona fide* purchaser, in the absence of evidence justifying a different conclusion, will not be considered as having been over-due and dishonored, so as to subject the endorsee to any equities existing between the original parties to it. *DENNEN vs. HASKELL*, 45 *Maine Reports*, 430.

384. An erasure by mistake, after a note is due, of the name of one who, at its inception, signed it on the back under the words, "holden on the within," does not discharge him from liability. *BRETT vs. MARSTON*, 45 *Maine Reports*, 401.

385. A note, payable in cash, or specific articles on demand, is the evidence of a promise in the alternative; and a demand of payment, before suit is brought, is necessary, that the maker may elect the mode of payment. *STEVENS vs. ADAMS*, 45 *Maine Reports*, 611.

386. But if the defendant, in his specifications of defence, does not refer to a want of demand, as a ground relied upon in defence, a demand will be regarded as admitted for the purpose of the trial. *Ibid.*

387. A surety upon a promissory note, upon payment by him, is entitled to be subrogated to all the rights and securities of the holder, for the purpose of obtaining reimbursement; and it is the duty of such holder, having such securities from the principal, to retain or dispose of them for the benefit of the sureties. And if, holding such securities, he surrenders them to the principal, without the assent of the sureties, he thereby discharges them to the amount of the value of the securities so surrendered. *CUMMINGS vs. LITTLE*, 45 *Maine Reports*, 183.

388. Whenever one having no interest in a note becomes a party to it, at the request and for the accommodation of another, the relation of principal and surety exists; and the original holder, between whom and the principal the consideration passed, is presumed to have knowledge of the fact. And if such note is transferred after it is dishonored, the endorsee has implied notice of the fact, and he takes the note subject to the equities existing between the original parties. *Ibid.*

389. In an action upon a promissory note against several persons, by a holder having express or implied notice that some of them became parties to it as sureties, if the fact is not apparent upon the face of the note, it may be proved by parol testimony. *Ibid.*

390. Where one, not the payee of a note, at its inception, signed on the back of it, under the words, "holden on the within," he thereby becomes a joint promisor with the other makers of the note. *BRETT vs. MARSTON*, 45 *Maine Reports*, 401.

391. A note payable "six — after date" is not void for uncertainty. But the intention of the parties, if legally ascertainable, should control in the construction of it. *NICHOLS vs. FROTHINGHAM*, 45 *Maine Reports*, 220.

392. The ambiguity being patent, is not explainable by parol testimony. But from the paper itself, in the light of the circumstances in which it was given, the actual intention of the parties may be inferred. *Ibid.*

The Law of Bills and Notes.

393. Where a note payable "six ——— after date" was given to an insurance company for a policy, six months being a usual time of credit, if there be nothing in the note to indicate a different time, the law will regard it as a note payable in six months from its date. *Ibid.*

394. In a suit by an endorsee against the maker of a promissory note, payable to an insurance company, and endorsed and transferred for the company by the president, parol evidence that he was acting president, at the time of the endorsement, is admissible and sufficient, without producing the records of the company. *CABOT vs. GIVEN, 45 Maine Reports, 144.*

395. And, in such suit, between other parties, proof of the handwriting of such president is sufficient evidence of the endorsement and transfer of the note to the plaintiff, without evidence that he had special authority for that purpose. *Ibid.*

396. Where two persons signed a note as sureties for a third, and the holder, having collateral security from the principal, of less value than the amount of the note, surrendered it to him without the assent of the sureties, one of, whom was also liable upon another note, the payment of which was the consideration for the giving up of the security, the principal is still liable for the whole note, and the sureties for the excess, above the value of the security surrendered. *CUMMINGS vs. LITTLE, 45 Maine Reports, 183.*

397. But if they are all sued in one action, being liable for different sums, the plaintiff cannot recover against either. *MAY and GOODENOW, JJ., dissenting. Ibid.*

398. The right of action on an endorsement or guarantee on a promissory note, in the words, "I hold myself responsible for the payment of the within note, agreeable to the mortgage by which the note is secured," is not thereby deferred until the foreclosure of the mortgage, the holder then to recover only the balance left due, but accrues when the note falls due. *MARSTON vs. MARSTON, 45 Maine Reports, 412.*

399. A. gave his negotiable note for the premium on an insurance policy. The note having been transferred, and a claim for loss accruing to A., afterwards, when the company had become insolvent, it was held, that he could not set it off against the note in the holder's hands. *CABOT vs. GIVEN, 45 Maine Reports, 144.*

400. A note payable to the order of L. M., president of M. F. and M. Insurance Company, is payable to the company; and the endorsement by L. M., as president, &c., will be a sufficient transfer of it, in the absence of all proof that he was unauthorized to negotiate and endorse it. *NICHOLS vs. FROTHINGHAM, 45 Maine Reports, 220.*

401. If the president of an insurance company is empowered and required by the by-laws to adjust and pay all losses, authority to transfer and dispose of the funds of the company for that purpose, including negotiable paper owned by them, may be presumed; for the imposition of the duty implies the grant of authority necessary to its performance. *BAKER vs. COTTER, 45 Maine Reports, 236.*

402. In a suit between other parties, parol evidence is admissible, and sufficient to prove that a person was president of an insurance company, and that he had authority to endorse notes for the company. *Ibid.*

403. The notarial protest of a bill of exchange or promissory note, duly certified, is legal evidence of the facts stated therein. *LOUD vs. MERRILL*, 45 *Maine Reports*, 516.

404. It is not necessary, in an action against the endorser of a note, for the plaintiff to prove that the defendant actually received the notice of non-payment. It is sufficient if it appears that the letter containing the notice was properly directed, seasonably mailed, and the postage paid. *Ibid.*

405. The endorser of a bill of exchange that has been protested for non-payment, cannot legally institute a suit thereon, in his own name, against the acceptor, before he has paid the same to the holder, although he has admitted his liability, and agreed on the mode in which he would pay it, or has paid it, after action brought, to the bank by whom it was discounted, and has been authorized by the president of the bank, after the payment, to "prosecute the suit at his own risk." *LONGFELLOW vs. ANDREWS*, 45 *Maine Reports*, 75.

XII. MARYLAND.

406. Notice of non-payment given the drawer by the acceptor, enures to the benefit of an endorsee. *BRAILSFORD vs. WILLIAMS*, 15 *Maryland Reports*, 150.

407. Proof was, that the letter containing the notice was placed in the ordinary place, to be taken to be mailed, but the porter was not called, nor his absence accounted for, and the court held the evidence insufficient to prove the mailing. *Ibid.*

408. To prove the notice, a press copy of the letter was put in; it had a blank where the ink had not taken, but the court held that immaterial, as what did appear showed a good notice, and the blank was not the result of an attempt to keep back part of the letter. *Ibid.*

409. To make a demand upon the personal representative of an acceptor good, proof must be made of the death of the party, and of the appointment of the representative. *WEEMS vs. FARMERS' BANK, &c.*, 15 *Maryland Reports*, 231.

410. Statute of 1837, chapter 253, does not make the recital of these facts in the notarial protest *prima facie* evidence of them. *Ibid.*

411. The certificate of the notary is made, by the act of 1837, chapter 253, *prima facie* evidence, but, like all other evidence, it must be submitted to the jury and passed upon by them. *RICKETTS vs. PENDLETON*, 14 *Maryland Reports*, 320.

412. When the maker does not reside, and has no place of business in the State where the note is payable, no demand is necessary upon him in order to charge the endorser. *Ibid.*

413. The sufficiency in law of the demand and notice, as evidenced by the notarial certificate, to charge the endorser, must be determined by the court. *Ibid.*

414. Notice sent through the post-office to an endorser living in the city of Baltimore, but who always receives his letters by the penny-post, is well sent. *WALTERS vs. BROWN*, 15 *Maryland Reports*, 285.

415. In this case, the penny-postman swore that all letters which had come to the penny-post during the last six years, directed to A. B., the defendant, had been delivered to him; that he was a well known citizen, and the only A. B. served by the penny-post. *Ibid.*

416. In absence of proof to the contrary, the presumption is, that a note is payable at the place where it is dated. *RICKETTS vs. PENDLETON*, 14 *Maryland Reports*, 320.

417. An agreement between an endorser and the makers of a promissory note, (negotiable,) that it was not to be delivered as a note endorsed, unless and until a bill of sale of a steamer was executed, and delivered by her owners to the makers, and until a first lien was given thereon by the latter to the endorser, is not *per se* evidence in an action on the note by the holder against the endorser. *Ibid.*

418. But may be shown upon the further proof that the plaintiff received the note from the makers with express notice of such agreement. *Ibid.*

419. From such evidence the jury might infer that the plaintiffs acquiesced in the agreement, and accepted the note subject to its stipulations and conditions. *Ibid.*

420. A defendant may show by parol, that a note on which he is sued as endorser, was delivered as an escrow, or that it was delivered to the plaintiff to be held upon a condition to be performed before the interest of the holder could attach. *Ibid.*

421. Acceptance of a bill of exchange admits the signature of the drawer, but it is no proof or admission of the endorsement by the payee, whether the bill be payable to the drawer's own order or that of another person. *WILLIAMS vs. DREXEL*, 14 *Maryland Reports*, 566.

XIII. MASSACHUSETTS.

422. The question whether due diligence was used to make a demand on the maker of a promissory note, in order to charge the endorser, if there be conflicting evidence, is for the jury, under proper directions from the court as to what amounts to due diligence. *WYMAN vs. ADAMS*, 12 *Cushing's (Massachusetts) Reports*, 210.

423. A presentment for payment, at any bank in Boston, of a note payable "at bank in Boston," or "at either bank in Boston," is sufficient demand upon the maker to charge the endorser. *MALDEN BANK vs. BALDWIN*, 13 *Gray's (Massachusetts) Reports*, 154. *HAMPDEN, &c., INSURANCE COMPANY vs. DAVIS*, *Ibid*, 156, note.

424. If the maker of a promissory note leaves the commonwealth, abandoning simultaneously both his residence and his place of business here, although his family remain a few months at the former, it is sufficient to charge one who endorsed the note to the plaintiff after the maker absconded, to make a demand at the maker's last place of business, without inquiring at his last residence, or of the endorser, for the maker's present residence. *GRAFTON BANK vs. COX*, 13 *Gray's (Massachusetts) Reports*, 503.

425. The description of a promissory note, in a sealed guaranty, as annexed thereto, and the omission to mention in the guaranty, that the note is attested, and bears endorsements of payments of interest, will not exempt the guarantor from the payment of a note corresponding in all other particulars with the description in the guaranty. *WORCESTER COUNTY INSTITUTION, &c., vs. DAVIS*, 13 *Gray's (Massachusetts) Reports*, 531.

426. A guaranty of a promissory note, expressly "waiving all right to demand and notice," cannot be contradicted by oral evidence of a contemporaneous agreement to collect the note from the principal debtor, and of laches in pursuing him. *Ibid.*

427. Infancy of the maker of a note does not excuse the want of a demand on him by the holder, in order to charge the endorser. *WYMAN vs. ADAMS*, 12 *Cushing's (Massachusetts) Reports*, 210.

428. Notice to the endorser of a note, not payable at any bank by its terms, or by usage, and not left in any bank for collection, and not presented to the maker for payment, is premature, if sent before the close of business hours of the last day of grace, though after bank hours; for the maker had the whole business day in which to pay it. And it is immaterial that the endorser knew that the maker had absconded. *PIERCE vs. CATE*, 12 *Cushing's (Massachusetts) Reports*, 190.

429. Payment of a note by the principal discharges the surety, so that the note cannot be again put in circulation against him. *CHAPMAN vs. COLLINS*, 12 *Cushing's (Massachusetts) Reports*, 163.

430. Giving time to one of two sureties on a promissory note does not discharge the other, although the first has signed his name on the face, and the other on the back of the note. *DRAPER vs. WELD*, 13 *Gray's (Massachusetts) Reports*, 580.

431. One who puts his name, before delivery, on the back of a promissory note, payable to the maker, or order, and endorsed by the maker, is an endorser and not a joint-maker, and his liability cannot be varied by parol evidence. *BIGELOW vs. COLTON*, 13 *Gray's (Massachusetts) Reports*, 309. *LAKE vs. STETSON*, *Ibid.*, 310, *note*.

432. Parties who endorse their names on a promissory note before its delivery, for the benefit of the maker, are not liable as joint makers, if the payee afterwards endorses his name above theirs, before the note is delivered; and other parol evidence is inadmissible to show that they were joint makers. *CLAPP vs. RICE*, 13 *Gray's (Massachusetts) Reports*, 403. *STIMSON vs. SLOWAY*, *Ibid.*, 405. *POWERS vs. EASTMAN*, *Ibid.*, 405, *note*.

433. If the maker of a note absconds, leaving no visible attachable property, a want of a demand or inquiry for him is not thereby excused, so as to charge the endorser, although the latter knew of such absconding. *PIERCE vs. CATE*, 12 *Cushing's (Massachusetts) Reports*, 190.

434. An assignment without endorsement, in a State whose laws provide that "every action must be prosecuted in the name of the real party in interest" of a promissory note, payable there to order, does not bar an action upon it in this commonwealth, in the name of the payee. *Foss vs. NUTTING*, 14 *Gray's (Massachusetts) Reports*, 484.

435. In an action to enforce rights under a promissory note given for the price of intoxicating liquors, sold before the passage of the statute of 1852, chapter 322, the burden of proving the illegality of the sale is upon the defendant. *BINGHAM vs. POTTER*, 14 *Gray's (Massachusetts) Reports*, 522.

436. B. conveyed land to A., and took a note for a portion of the purchase money, and A. gave an agreement to B., to convey the land to certain third persons upon receiving back the money already paid, and the note. B., by misrepresentation, obtained from A. deed of the land back to himself, gave up the note, and afterwards agreed to deliver up both deed and agreement if A. would give back the note, which he did. A. afterwards paid further sums for the land, and gave a new note for the balance, upon a promise of B. that the deed and agreement should be returned to him, which was never done. B. conveyed away the land, and A. recovered the same by suit against the grantee. *Held*, that these facts constituted no defence to an action on the note. *BLISS vs. TRIPP*, 14 *Gray's (Massachusetts) Reports*, 136.

437. In defence of an action by the payee, or his assignee in insolvency, on a promissory note, it may be shown by parol evidence that it was given as collateral security for liabilities incurred by the payee, at the request or for the benefit of the defendant, and that the payee suffered no loss by reason of those liabilities. *SLADE vs. HOOD*, 13 *Gray's (Massachusetts) Reports*, 97.

438. Under Revised Statutes, chapter 35, section 2, and statute of 1846, chapter 199, usury between the payee and maker of a promissory note is a good defence for the latter, *pro tanto* to the note in the hands of a *bona fide* endorsee, to whom it was endorsed before maturity, for full value, and without notice of the usury. *KENDALL vs. ROBERTSON*, 12 *Cushing's (Massachusetts) Reports*, 156.

439. A note given to a father, by the defendant in a bastardy process, instituted by his daughter in settlement of such process, and in consideration of her relinquishment of all claim for support of the child, is founded upon sufficient consideration, and may be sued in the name of the father, although he was but trustee for his daughter. *CUTTER vs. COLLINS*, 12 *Cushing's (Massachusetts) Reports*, 233.

440. The resignation of an office in a corporation is a sufficient consideration for a promissory note, although the maker of the note has previously agreed, for a valuable consideration, to resign the office on the de-

mand of the payee. *PEEK vs. REGUA*, 13 *Gray's (Massachusetts) Reports*, 407.

441. No action can be maintained on a note for the price of liquors sold by the plaintiff, knowing that they were to be re-sold in violation of law, and assisting the defendant in that unlawful purpose. *HUBBELL vs. FLINT*, 13 *Gray's (Massachusetts) Reports*, 277.

442. In an action on a promissory note, evidence that the defendant, at the same interview at which the note was given, gave another note to a third person, which had since been given up as made without consideration, is inadmissible to prove want of consideration of the note in suit; and if admitted by referees, under a rule of court, who award in favor of the defendant, subject to the opinion of the court, on the admissibility of the evidence, is ground for setting aside the award. *SLADE vs. HOOD*, 13 *Gray's (Massachusetts) Reports*, 97.

443. In an action on a promissory note, evidence that the consideration of the note was intoxicating liquor sold by the plaintiff to the defendant, for the purpose of being re-sold in this commonwealth, in violation of law, the plaintiff knowing and aiding in this purpose, is admissible under an answer which alleges that the note was in payment and compensation for liquors sold in violation of law, and received by the plaintiff without consideration, and against law, equity and good conscience, and no action ought to be maintained thereon. *HUBBELL vs. FLINT*, 13 *Gray's (Massachusetts) Reports*, 277.

444. Evidence of what was said, in the absence of a payee of a promissory note by one who had signed it on its face, to induce another to sign it on the back, is inadmissible to show that the latter put his name on the note with authority to fill up the blank with a guarantee only. And the admission of such evidence is not cured by a subsequent finding of the jury, that the signature was put upon the back of the note before it was delivered. *DRAFER vs. WELD*, 13 *Gray's (Massachusetts) Reports*, 580.

445. A foreign bill of exchange or promissory note, payable at sight, is entitled to grace by the general law-merchant, unless the contrary is shown to be the law of the place where it is to be paid; and must, therefore, be presented for payment. *CRIBBS vs. ADAMS*, 13 *Gray's (Massachusetts) Reports*, 597.

446. Evidence that the maker of a promissory note put property in the hands of the first endorser, has no tendency to show that the latter signed the note for the accommodation of the maker alone, and not of the maker and the second endorser jointly. *FARNUM vs. FARNUM*, 13 *Gray's (Massachusetts) Reports*, 508.

447. A notary cannot present a bill or note for payment by deputy, unless authorized by statute, or usage of the place where presentment is made.* *CRIBBS vs. ADAMS*, 13 *Gray's (Massachusetts) Reports*, 597.

* This is in conflict with decisions of the State of New-York, &c.—*Ed. B. M.*

XIV. MICHIGAN.

448. Where the owner of negotiable paper sells it, and accompanies the sale by a guaranty of collection thereon, it is not necessary to the validity of such guaranty that the name of the guarantee should appear in it. *THOMAS vs. DODGE*, 8 *Michigan Reports*, 51.

449. A guaranty so given is not within the statute of frauds. *Ibid.*

450. Where the amount of the note guaranteed is such that suit may be brought upon it, either in a justices' court or in a circuit court, the condition of the guaranty of collection is complied with by obtaining judgment in a justices' court, and making due endeavor to collect it by execution. *Ibid.*

451. And it is not necessary that a transcript of such judgment be filed in the circuit court, and execution against lands issued thereon, where it clearly appears that the judgment-debtor has no real estate liable to execution. *Ibid.*

452. Under rule 79, of the circuit court, a promissory note, a copy of which was attached to, and served with the declaration, may be read in evidence under the common counts, without proof of the signature, where its execution is not denied on oath. *HOARD vs. LITTLE*, 7 *Michigan Reports*, 468.

453. An agent of a tax collector having received in payment of taxes a draft upon the collector, and on the collector refusing to accept or allow the same, having paid over the amount of the tax himself, is a holder of the draft for value, and entitled to collect the amount from the parties thereto. *ELLIOT vs. MILLER*, 8 *Michigan Reports*, 132.

454. A promissory note, dated July 20, was, by its terms, payable "one year August 15th, after date." *Held*, that it was payable not one year after its date, but one year from the fifteenth day of August after its date. *WASHINGTON, &c., BANK vs. JEROME*, 8 *Michigan Reports*, 190.

455. Proof of any one or more of the legal conditions necessary to charge an endorser, has no tendency whatever to prove a compliance with the rest. *CICOTT vs. MORSE*, 8 *Michigan Reports*, 424.

XV. MISSISSIPPI.

456. The drawer of a bill is not entitled to an injunction to restrain an innocent holder from collecting the bill of an accommodation acceptor on the ground of fraud in the payee. *WINN vs. WILKINS*, 35 *Mississippi (6 George) Reports*, 186.

457. The contract of a drawer is to pay the bill, upon non-acceptance, not at the drawer's place of business, but where it was drawn. *WOOD vs. GIBBS*, 35 *Mississippi (6 George) Reports*, 559.

458. And, therefore, the drawer's liability is always to be determined by the law of the place where the bill was drawn. *Ibid.*

459. Where the bill is drawn in this State, no matter where payable, the drawer may set up that there was no consideration, even against an innocent holder, as that defence is allowed by the Revised Code, article 2, page 355. *Ibid.*

460. A contemporaneous written agreement, appended to a note, or endorsed on it, that it should not be paid until a certain event, forms part of it, and the note is not payable, nor does the statute of limitations begin to run until that event happens. *ERRINGER vs. RICHARDS*, 35 *Mississippi* (6 *George*) *Reports*, 540.

461. If the obligee or his agent verbally agree with the surety at the time of signing, that the surety shall not be bound unless another also becomes bound, the obligation as to the surety is void, unless that condition be fulfilled. *READ vs. McLEMORE*, 34 *Mississippi* (5 *George*) *Reports*, 110.

462. A suit may be dismissed as to the principal promissor, and proceeded to judgment against the sureties, if they are joint promissors. *WILKINSON vs. FLOWERS*, 37 *Mississippi* (8 *George*) *Reports*, 579.

463. Notes payable to bearer, may be passed by delivery, by a *feme covert*, who owned them. Certainly they will pass by a joint assignment of the husband and wife. *CORB vs. DUKE*, 3 *Mississippi* (7 *George*) *Reports*, 60.

464. No endorsement or written assignment of a promissory note is necessary to enable the holder thereof to maintain an action thereon in his own name: *LEWIS vs. BOWEN*, 29 *Mississippi* (8 *Jones*) *Reports*, 202.

465. One who has given his note to an incorporated academy as the price of a scholarship, to be at his own disposal, cannot be compelled to pay it, after the academy has become insolvent and been shut up, it being understood that the price of the scholarship was to be a permanent fund, the interest of which only was to be spent. *MARY WASHINGTON, &c., COLLEGE, vs. McINTOSH*, 37 *Mississippi* (8 *George*) *Reports*, 671.

466. The trustees of the academy, in such a case, have power to cancel the agreement to teach the promissor's nominee, so long as he paid interest, and, thereupon, to release his note to him. *Ibid.*

467. The mortgagee of a note payable to bearer delivered it to an attorney, as the property of the mortgagor, and directed a suit to be brought on it in the mortgagor's name. *Held*, that the mortgagor thereby acquired the legal title, and so the suit, in his name, was sustained. *FOX vs. HILLIARD*, 35 *Mississippi* (6 *George*) *Reports*, 160.

468. A. was indebted to B., who was indebted to C.; by agreement between the three, A. gave C. his promissory note in full satisfaction of B.'s debt to C. *Held*, that A. must pay the note if C.'s debt was valid, although he had a good defence to the debt he owed to B. *MARSH vs. LYSLE*, 34 *Mississippi* (5 *George*) *Reports*, 173.

469. In the execution of a promissory note, a person may adopt and ratify the signing of his name by another. *DOW vs. SPENNY*, 29 *Mississippi* (8 *Jones*) *Reports*, 386.

470. Delivery is necessary to the complete execution of a promissory note; if the payee obtain possession of it by fraud, he cannot maintain an action thereon. *CARTER vs. McCLINTOCK*, 29 *Mississippi* (8 *Jones*) *Reports*, 464.

471. By statute of 1833, a promissory note is protestable paper, and the notary is bound to give notice to all endorsers, &c., though by commercial law it is not protestable, and he need only notify the party from whom he received it. *BOWLING vs. ARTHUR*, 34 *Mississippi* (5 *George*) *Reports*, 41.

472. Notice through the post-office to an endorser in the same town is bad. *Ibid.*

473. A *bona fide* holder for value is free from all equities. *MERCEN vs. COTTON*, 34 *Mississippi* (5 *George*) *Reports*, 64.

474. One who took in discharge of a secured debt is a *bona fide* holder for value. *EMANUEL vs. WHITE*, 34 *Mississippi* (5 *George*) *Reports*, 56.

475. In Louisiana, as by the general rules of commercial law, possession of a note duly endorsed, *prima facie* implies title, and casts the burden on the defendant. *Ibid.*

476. Proof of payment to the payee after maturity, without asking him to deliver up the note, does not affect the *prima facie* title as above as against the endorser. *Ibid.*

477. In a suit upon a promissory note, absolute on its face, parol evidence is inadmissible to show that though absolute in form it was payable only upon a contingency, or that in a certain event only one-half the amount was to be paid. *SMITH vs. THOMAS*, 29 *Mississippi* (8 *Jones*) *Reports*, 307.

478. Parol evidence is inadmissible to show that a note, absolute on its face, is payable at a time different from that stated therein. *INGE vs. HANCE*, 29 *Mississippi* (8 *Jones*) *Reports*, 399.

479. An excuse for non-presentment should be shown in the first instance, and not by way of rebuttal after the defendant has shown the non-presentment. *WOOD vs. GIBBS*, 35 *Mississippi* (6 *George*) *Reports*, 559.

480. A party may, pending the suit, strike out an endorsement to himself, and afterwards treat it as restored. *MONTAGUE vs. KING*, 37 *Mississippi* (8 *George*) *Reports*, 441.

481. A consignor drew a bill on the consignor's selling agent, in favor of the consignee, to reimburse him for advances; the consignee negotiated it, but was obliged to pay it at maturity, the consignor having no funds in the agent's hands. *Held*, that the consignee, who was payee and endorsee, could recover of the drawer without protest. *CARSON vs. ALEXANDER*, 34 *Mississippi* (5 *George*) *Reports*, 528.

482. If the drawer had no funds in the drawee's hands, when the bill was drawn, and informed the payee that he did not expect to have any, and that the drawee would not pay it, as against the drawer, no present-

ment for payment need be made. *WOOD vs. GIBBS*, 35 *Mississippi (6 George) Reports*, 559.

483. What is due diligence in giving notice of dishonor of a bill of exchange is a question of law when the facts are admitted; where the facts are disputed, the court should give hypothetical instructions, leaving the facts to the jury. *SINVILLE vs. WELCH*, 29 *Mississippi (8 Jones) Reports*, 203.

484. If the residence of the endorser of a dishonored bill is unknown to the holder, inquiry should be made to ascertain his domicile or place of business. *Ibid.*

485. A bill of exchange, drawn in one State of the United States upon a person in another State, is to be treated as a foreign bill of exchange; in case of dishonor, protest is necessary; but the notice of dishonor need not be accompanied by a copy of the protest. The notice may be a verbal one. *Ibid.*

486. Presentment of a bill of exchange to the drawee must be made in a reasonable time. What time will be reasonable depends upon the circumstances of the case. *Ibid.*

487. The accommodation acceptor cannot object that the bill was put in circulation in fraud of an agreement between the payee and the drawer, to which he was not a party. *HANDY, J.*, dissenting. *WINN vs. WILKINS*, 35 *Mississippi (6 George) Reports*, 186.

488. An accommodation acceptor cannot have an attachment against the drawer until payment of the bill, for until then he is but a surety, not a creditor. *HENDERSON vs. THORNTON*, 37 *Mississippi (6 George) Reports*, 148. *TODD vs. SHOUSE*, 14 *Louisiana Annual Reports*, 426.

489. An accommodation party, obliged to pay a bill, should have eight per cent. interest, as on a loan, not five per cent., the rate fixed for bills. *CARSON vs. ALEXANDER*, 34 *Mississippi (5 George) Reports*, 528.

490. A consignee who has paid a bill, which he had endorsed, drawn upon his selling agent by the consignor, and not paid for want of funds, may charge the consignor with the original debt, *plus* the amount paid on the bill, less the sum realized on it. *Ibid.*

XVI. NEW-HAMPSHIRE.

491. After the signatures to a note have been proved, such note may be read in evidence, not only to show the terms of the contract which the defendants made, but also to show the party or parties with whom it was made; and if a note be made payable to a firm, the note itself is competent evidence, after proof of the defendants' signatures to it, of the existence of such firm, as against such defendants. *BLODGETT vs. JACKSON*, 3 *Chandler's (New-Hampshire) Reports*, 21.

492. A note was made payable to *WHITNEY, SHAW, LENT and HOWES*, and endorsed to the plaintiff. On trial the signatures and endorsement were denied, and after proof of the defendants' signatures to the note, the

plaintiff proved, that upon the day of the date of the note, a man calling himself LENT, and as one of the firm aforesaid, sold the same to the plaintiff, and endorsed it in the name of said firm. *Held*, that in the absence of all other evidence upon the point, possession of the note was competent evidence of ownership, and of the identity of the person selling and endorsing the note with the LENT to whom, with others, the note was payable. *Ibid*.

493. When a note is made payable to a firm, and no such firm exists, the person to whom such note was given may assume such firm name, and endorse said note in the name of such firm, and it will be a good endorsement in the hands of an innocent holder, who may collect the same of the makers, under a count for money had and received. *Ibid*.

494. Trover may be maintained by the maker of a promissory note against the payee, after the same is fully paid, if the payee, having the note in his possession, refuses to deliver it to the maker on demand, or, if after payment, the payee disposes of the note. *STONE vs. CLOUGH*, 4 *Chandler's (New-Hampshire) Reports*, 291.

495. The fact that a note was originally obtained by duress, will not be a good defence to the note in the hands of a *bona fide* holder for a valuable consideration paid before its maturity. *CLARK vs. PEASE*, 4 *Chandler*, 414.

496. But where fraud, illegality or duress, in the making or original circulation of the bill or note is shown, that will cast upon the plaintiff the burden of proving that he is a *bona fide* holder for a valuable consideration. *Ibid*.

497. Where several sign a note without any designation as to the character in which they sign, whether as principals or sureties, they will all be presumed to be principals; yet that presumption may be rebutted by extrinsic evidence, that some of the signers were sureties only, and that this fact was known to the creditors. *DEBRY BANK vs. BALDWIN*, 4 *Chandler*, 434.

498. But where several sign a note jointly and severally, and "all as principals," as against the payee, evidence that any of the signers are sureties only, and that this fact was known to the payee, is inadmissible, as tending to contradict the express stipulations of the contract of the signers with him. *Ibid*.

499. A cashier of a bank has power *prima facie* to endorse for collection notes discounted, and notes deposited to be collected, or deposited as collateral security. *CORSEY vs. PAUL*, 4 *Chandler*, 24.

500. It is sufficient evidence of a ratification by a bank of the cashier's endorsement, that the bank prosecutes the suit in the name of the endorsee. *Ibid*.

501. A conversation between the principal signer of a note and a supposed surety who denied his signature, after the latter had seen the note, in the absence of any person interested for the holder, was held incompetent to affect the latter. *Ibid*.

502. The silence of a party, to whom a note, purported to be signed by him, was shown, with a request to pay it, is competent evidence that his signature is genuine; or, if not genuine, of his assent to be bound by it. *Ibid.*

503. Such silence does not operate as an estoppel upon the party to deny or disprove his signature, unless the holder has been led to change his position, or otherwise act upon it to his injury. *Ibid.*

504. F. sold, transferred and delivered a promissory note against W. to M., on Sunday, and received his pay for the same. W. cannot be held as the trustee of F. for the money due on said note, after such transfer to M., even though the contract, as between the parties, was illegal, as being prohibited by law. *SMITH vs. FOSTER*, 4 *Chandler's (New-Hampshire) Reports*, 215.

505. It is no defence to an action upon a note that the consideration of it was another note against one B., transferred to the defendant by the plaintiff, with a guarantee of payment before the note in suit shall fall due, which note against B., has not been paid. *STATE vs. HOBBS*, 3 *Chandler's (New-Hampshire) Reports*, 229.

506. An indictment for perjury is insufficient, which charges the false statement of the above facts, in an affidavit made by defendant, upon a motion for a continuance of a civil action at the first term, under the 27th rule of court; such facts not showing probable ground of defence, and being immaterial upon the question of continuance. *Ibid.*

507. By the revised statutes, protests of bills, notes and orders are made evidence in all cases of the facts stated in such protests, whether those facts relate to the dishonor of the bill or note, or to the notice given to any of the parties thereto. *SIMPSON vs. WHITE*, 3 *Chandler's (New-Hampshire) Reports*, 540.

508. When a note is made to raise money, it does not change the liability of the maker that the money is advanced by a third person instead of the payee. *BANK OF NEWBERRY vs. RAND*, 38 *New-Hampshire Reports*, 166.

509. Where the defendants, for the purpose of raising money for the use of a rail-road, signed a note, payable to a bank, and delivered it to agents to procure it to be discounted, but the bank refusing to advance the money, the agents obtained a larger sum from other persons upon the notes of the corporation and directors, and pledged the note of the defendants, together with the bonds of the corporation, as collateral security, and the money was appropriated for the use of the road: It was held, that the notes of the corporation, not being paid, a suit could be maintained upon the note of the defendants, in the name of the bank, for the benefit of those who advanced the money. *Ibid.*

510. The holder of a dishonored note is bound to exercise ordinary and reasonable diligence in ascertaining the residence or business address of the endorser, and in forwarding notice of the dishonor to him accordingly. *BRIGHTON MARKET BANK vs. PHILBRICK*, 3 *Chandler's (New-Hampshire) Reports*, 506.

511. If he inquire of persons who, from their connection with the note, or their acquaintance with the endorser, are likely to know his residence, and are not interested to mislead him, and is distinctly told where the endorser resides, and in good faith seasonably acts upon the information thus obtained, it is due diligence on his part. *Ibid.*

512. Where the holder of a dishonored note, not knowing the residence or business address of the endorser, went to the principal hotel in the village where the endorser was accustomed to do business—that at which men of the same occupation with the endorser usually stopped—to the keepers of which the endorser was well known, and from the direction of which the holder had noticed the endorser coming to his own place of business, and, upon inquiry there, was distinctly informed that the endorser resided in a particular town; whereupon he, in good faith, seasonably forwarded notice of the dishonor to the endorser in that town. *Held*, that this was due diligence in the holder. *Ibid.*

513. Where the notary certifies in his protest that he has notified the endorsers residing in the same town or city, such certificate is to be taken as *prima facie* evidence of personal notice to such endorsers of the dishonor of the bill or note, and of all other facts necessary to charge the endorsers. *SIMPSON vs. WHITE*, 3 *Chandler's (New-Hampshire) Reports*, 540.

514. Where the notary certifies in such protest that he deposited in the post-office a notice directed to the endorser, if it shall appear that such notice was deposited at the proper time, and was properly directed, such certificate is to be received as *prima facie* evidence that such written notice contained a statement of all the facts necessary to charge the endorser. *Ibid.*

515. Where the endorser of a bill or note resides in this State, and has no place of business elsewhere, though the original parties to the note or bill, and the endorsee and first endorser reside in another State, in the absence of all proof as to where the endorsement was actually made, it will be presumed to have been made at the place of residence of the endorser. *Ibid.*

516. Upon the question of due diligence in giving notice of the dishonor of a note to the endorser, the result of inquiries, made subsequently to the sending of the notice, is immaterial and incompetent. *BRIGHTON MARKET BANK vs. PHILBRICK*, 3 *Chandler's (New-Hampshire) Reports*, 506.

517. The endorser of a promissory note, payable on time, with interest annually, and secured by a mortgage of real estate, who has been compelled by the endorsee to pay the annual interest due thereon, cannot maintain an action upon the mortgage, to recover possession of the mortgaged premises, while the note still remains the property of the endorsee, and the principal sum is due to him thereon. *GANNETT vs. BLODGETT*, 39 *New-Hampshire Reports*, 150.

518. The liability of an accommodation endorser is not affected by the makers transferring the note directly to their creditor in payment of their debt, instead of obtaining the money to be used in their business, by a

discount at a bank, as was the original purpose. *PERRY vs. ARMSTRONG*, 39 *New-Hampshire Reports*, 583.

519. A composition deed, by which the plaintiff, to whom the note in question was transferred, agreed to receive a certain per cent. of all debts due from the makers of the note, in full discharge of the same, to be paid at a time beyond the maturity of the note, operates as an extension of the time of payment, and discharges the endorser. *Ibid.*

520. In an action by an endorsee against the maker of a negotiable note, if it appears that the note was endorsed after it was discredited, the maker may set-off a claim against the endorser, unless it is shown by the holder that he took the note *bona fide*, and for a valuable consideration. *ODIORNE vs. WOODMAN*, 39 *New-Hampshire Reports*, 541.

XVII. NEW-JERSEY.

521. Taking notes for a lien claim, is no abandonment of the lien security; and if the notes are not paid at maturity, the claimant may enforce his lien in the same manner as if the notes had never been given. *EDWARDS vs. DERRICKSON*, 4 *Dutcher's (New-Jersey) Reports*, 39.

522. Where a member of a firm draws his endorsed note, payable to A., who endorses it as accommodation paper upon the credit of the firm, upon the representation by the drawer that it is for the use of the firm, it is no error for the court to charge that the jury had no right to infer, from such representation, that the note was for the use of the firm. *UHLEB vs. BROWNING*, 4 *Dutcher's (New-Jersey) Reports*, 79.

523. Nor is the admission of the drawer afterwards, and while the firm is in existence, any evidence that the proceeds of the note went actually to the use of the firm. *Ibid.*

XVIII. NEW-YORK.

524. An instrument in the following form, viz.—“\$500. Columbus, March 1st, 1853. Messrs. JOHN STEWART, Jr., & Co., please pay to the order of ARCHIBALD H. LOWERY, the sum of \$500, on account of twenty-four bales of cotton, shipped to you as per bill of lading, by steamer Colorado, enclosed to you in letter. STRIPPLEMAN & BOYCE”—is a bill of exchange. *LOWERY vs. STEWARD*, 3 *Bosworth's (N. Y.) Reports*, 505.

525. An unconditional order upon A., to pay a sum certain to the order of a person therein named, is none the less a bill of exchange because it specifies the account which forms the consideration of the order. *Ibid.*

526. And, therefore, the acceptance thereof must be in writing, under the statute. *Ibid.*

527. Where a promissory note is due and payable at the moment of its execution and delivery, the note cannot be transferred so as to cut off any defence existing in behalf of the maker at that time. *SACKETT vs. SPENCER*, 29 *Barbour's (N. Y.) Reports*, 180.

528. A *bona fide* holder for value is not affected by the diversion of negotiable paper from the condition on which a party became an accom-

modation endorser, and the rights of such holder will pass to his endorsee, although he may have notice. *NOBLE vs. CORNELL*, 1 *Hilton's (N. Y. C. P.) Reports*, 98.

529. Where an endorsee is the party plaintiff, proof of a failure of consideration is inadmissible without evidence impeaching his title. *BRITTON vs. HALL*, 1 *Hilton's (N. Y. C. P.) Reports*, 528.

530. One who takes a note after maturity, has all the rights of his assignor, who took before maturity. *Ibid.*

531. Where a note is transferred after maturity, it is taken subject only to the defences existing against it in the holder's hands when it matured. *Ibid.*

532. A. endorsed M.'s note for a consideration paid by the holders, and to enable them to raise money. Upon non-payment at the bank where it was discounted, A. took it up. *Held*, that A. took all the rights of the bank, and was not subject to equities between the maker and the former owners. *FLINT vs. SCHOMBERG*, 1 *Hilton's (N. Y. C. P.) Reports*, 532.

533. A clerk's memorandum of service of notice of protest at a certain place, but not stating the time of service, and unassisted in this respect by the clerk's testimony, except that he testified that from his custom of serving notices on the day after the protest, he was confident he had done so in this case, is insufficient to charge an endorser with notice, where there is evidence to show that he did not receive any. *INGRAHAM, F. J.*, dissenting. *TAYLOR vs. STRINGER*, 1 *Hilton's (N. Y. C. P.) Reports*, 377.

534. Payment of a note may be demanded, and notice of its non-payment may be given by any person authorized by the holder, with the same effect as if done by a notary; and the possession of the note is sufficient evidence of authority. *COLE vs. JESSUP*, 10 *New-York (6 Selden) Reports*, 96.

535. Notice of dishonor by the holder enures to the benefit of all parties to the paper, but an excuse for the omission of service does not aid parties who are without excuse. *BEALE vs. PARISH*, 20 *New-York (6 Smith) Reports*, 407.

536. And where the holder of the note did all in his power to notify the parties, but directed the notice incorrectly, and his endorser having knowledge of the residence of the maker, took up the note, without giving any further notice, and then brought suit against a prior endorser, it was held that he could not recover. *Ibid.*

537. An endorsee of a note, payable to the order of an incorporated company, who takes it under an endorsement purporting to have been made by its president, or other agent, takes it at the peril of being able to show, when his title is questioned, that the person assuming to endorse it in the name of the company had authority to do the act, and in an action on the note, must prove such authority. *MARINE BANK, &c., vs. CLEMENTS*, 3 *Bosworth's (N. Y.) Reports*, 600.

538. In an action against a second endorser, he offered to show that the first endorser (payee) was a married woman. *Held*, immaterial, since

his endorsement was a guaranty of the genuineness of the signatures, and competency to contract, of prior parties. *OGDEN vs. BLYDENBURGH*, 1 *Hilton's (N. Y. C. P.) Reports*, 182.

539. Where, after a note falls due, the holder accepts a new note from the maker, and thereby extends the time of payment, he thereby discharges the endorsers. *PLATT vs. STARK*, 2 *Hilton's (N. Y. C. P.) Reports*, 399.

540. The memoranda of a bank teller, who is likewise clerk to a notary, made by the witness himself in the course of his employment as clerk, who testifies that he retains no recollection of the fact, but knows that no memoranda would have been made had he not done the acts, are admissible to prove the presentment and notice of non-payment of a note, not as the act of the notary, but as that of the witness in his private capacity. *COLE vs. JESSUP*, 10 *New-York (6 Selden) Reports*, 96.

541. In case of a guaranty, the obligation to prosecute the principal debtor within a reasonable time, and with due diligence, is a condition precedent to the liability of the guarantor. *GALLAGHER vs. WHITE*, 31 *Barbour's (N. Y.) Reports*, 92.

542. What is a reasonable time, must always depend upon the particular circumstances of the case. *Ibid.*

543. If a guarantor intends to rely upon a want of diligence in collecting the money due from the principal debtor, as a substantial defence, he should present the question distinctly for the judgment of the court, by asking for specific instructions to be given to the jury. *Ibid.*

544. S. made a note, payable to W., or bearer. W. transferred the note to B., in part payment for a piano, at the same time guaranteeing its collection, by an endorsement upon the back thereof. S. failing to pay the note at maturity, W. took it up from B. He subsequently transferred the note to the plaintiff, who expressly agreed to take the same at his own risk. Through inadvertence, however, the guaranty was not erased at the time of the transfer. *Held*, that the guaranty, being a contract between W. and B., when W. paid B. the amount of the note, and took it up, the guaranty was *functus officio*; that the defendant could show the agreement, and that, consequently, the plaintiff could not maintain an action thereon. *Ibid.*

545. B. made a note for \$500, payable to G., or bearer, without consideration, for the accommodation of G., and to enable him to raise the money; it was delivered by G. to the defendant, to be used to raise money for G. The note was afterwards signed by G. also, without the knowledge or consent of B. The defendant then endorsed upon the note a guaranty of payment, and sold it to BURTON, the plaintiff's assignor, for \$425. *Held*, that if the note was valid in the hands of G. as against B., when originally delivered to G., the transaction was not usurious, and the defendant was liable upon the guaranty, although G. signed the note without the knowledge or consent of B., at the same time the guaranty was signed, and the money advanced to G. by BURTON. *BURTON vs. BAKER*, 31 *Barbour's (N. Y.) Reports*, 241.

546. The plaintiff was accordingly adjudged to be entitled to recover

of the defendant upon his guaranty the amount actually advanced by BURTON upon the purchase of the note, with interest. *Ibid.*

547. The endorser of a promissory note, dishonored on Saturday, is duly charged, where the agent for its collection, not being able to ascertain the endorser's residence, mails notice of its non-payment, on the following Monday, to his principal, and the principal, on the next day after receiving it, mails notice to the endorser. *THE FARMER'S BANK OF BRIDGEPORT vs. VAIL*, 7 *Smith's Reports*, 485.

548. "Due A. Y. or bearer, three hundred and forty dollars, for value received, with interest, at LEICESTER's office, in Rochester. Oct. 4, 1851. S. S."—is a promissory note, payable immediately, and not entitled to grace. *SACKETT vs. SPENCER*, 29 *Barbour's (N. Y.) Reports*, 180.

549. An instrument promising to pay money upon a contingency, is not a negotiable promissory note. But although drawn payable to order, delivery of such note, without endorsement, with intent to transfer, is a valid assignment, on which the holder may recover. *LOFTUS vs. CLARK*, 1 *Hilton's (N. Y. C. P.) Reports*, 310.

550. An instrument in form of a bond, but without seal, is a promissory note. *WOODWARD vs. GENET*, 2 *Hilton's (N. Y. C. P.) Reports*, 526.

551. An endorser of a note is not the assignor of a thing in action, within the meaning of section 399 of the Code, although he endorses and transfers the note after it has become due. *GARDNER vs. GORDON*, 3 *Bosworth's (N. Y.) Reports*, 369.

552. Where the maker of a protested note pays the amount to the original payee, and not to the holder, and the holder, with knowledge of the fact, gives further credit to the payee, the maker is not a surety of the payee to be discharged by the indulgence. *CARR vs. LEWIS*, 20 *New-York (6 Smith) Reports*, 138.

553. *Semble*, if the payee had been directed to take up the note, and had been accepted by the holder as his debtor, the maker would be discharged by the novation. *Ibid.*

554. On the maturity of a note, one of two accommodation endorsers gave his own note in renewal with collaterals, without the knowledge of the other. *Held*, a discharge of the other endorser. *KELTY vs. JENKINS*, 1 *Hilton's (N. Y. C. P.) Reports*, 73.

555. Where one of two several judgments, held by a bank against the maker and endorser of a promissory note, has been satisfied out of the estate of the endorser, an assignment by the bank of the outstanding judgment against the maker to a third person, at the request of the endorser, will, in the absence of proof of the contents, or consideration of such assignment, be presumed to be a valid and unqualified one to such person for his own benefit, and not as trustee for the endorser; and the burden of showing the contrary must rest on the defendant in an action brought upon such judgment. *ENO vs. CROOK*, 10 *New-York (6 Selden) Reports*, 80.

556. A party who entrusts another with his acceptance in blank, is responsible to a *bona fide* holder, although the blank be filled with a sum

exceeding that fixed as a limit by the acceptor. *VANDUZER vs. HOWE*, 7 *Smith's Reports*, 531.

557. Though the filling of the blank in violation of the agreement of the parties be a forgery, the acceptor is estopped from setting up the fact. *Ibid.*

558. The complaint by the president of a banking association did not aver any negotiation of the bill to the bank. An amendment supplying such averment is properly allowed, and, if not so, is a matter of discretion, not reviewable on appeal. *Ibid.*

559. Where a party negotiates commercial paper payable to bearer, or under a blank endorsement, he warrants that he has no knowledge of any facts which prove the paper to be worthless, on account of the failure of the makers, or of payment of usury, or which otherwise render it void or defunct. *DELAWARE BANK vs. JARVIS*, 20 *New-York (6 Smith) Reports*, 226. *BROWN vs. MONTGOMERY*, *Ibid.*, 227.

560. Where the transferee was cast, in an action against the makers, on the ground of usury, and had given notice of the nature of the defence to the party transferring the note, he was held to be entitled to recover for the amount of the note and the costs of the unsuccessful suit. *Ibid.*

561. A loan was obtained from a bank on depositing accommodation paper, as collateral. When due, the debtor had a deposit somewhat less than the loan, and the cashier informing him that the note had been charged to him, delivered up the collaterals, which were returned to the parties. Shortly afterwards the cashier requested a return of the collaterals, and they were returned. The loan not having been paid, suit was brought against the endorser, on one of the collaterals. *Held*, that charging the loan did not relieve the collaterals, nor amount to payment, and that their return placed the parties in the same position as before they were given up. *BRADY J.*, dissenting. *WILLIAMSON vs. NILLS*, 2 *Hilton's N. Y. C. P.) Reports*, 84.

562. The statements or entries of the makers and endorsers of promissory notes, made in the absence of the holder, are not competent evidence against him. *CITY BANK OF BROOKLYN vs. MCCHESENEY*, 20 *New-York (6 Smith) Reports*, 240.

563. In an action on negotiable paper, which has been lost, the giving indemnity required by law (2 Revised Statutes, 408, section 76) is a condition precedent to recovery. *DESMOND vs. RICE*, 1 *Hilton's (N. Y. C. P.) Reports*, 530.

564. A chattel note, though drawn payable to order, is not negotiable, and cannot be "endorsed," but it can be assigned, and by parol. *BROWN vs. RICHARDSON*, 20 *New-York (6 Smith) Reports*, 472.

565. An averment by endorsers of negotiable paper, without averments of partnership or joint ownership, that the paper in suit as endorsed, "came lawfully into the possession of the plaintiffs for value," is a sufficient averment of ownership. *LEE vs. AINSLEE*, 1 *Hilton's (N. Y. C. P.) Reports*, 277.

566. In legal effect, an endorsement in blank is an endorsement to any person who may hold it, and the denial of an "endorsement to the plain-

tiff" is immaterial and frivolous. *HAMLAH vs. SALTER*, 1 *Hilton's (N. Y. C. P.) Reports*, 558.

567. In an action against an endorser, the answer set up that the maker had a counter-claim against the party transferring to the holder. *Held*, immaterial, and a motion to strike out was granted. *ARRANGEZ vs. FRAZER*, 2 *Hilton's (N. Y. C. P.) Reports*, 244.

568. An answer setting up the defence against a holder for value, that the note was an accommodation one, and known by the plaintiff to be such when taken, is frivolous. *PETTIGREW vs. CHAVE*, 2 *Hilton's (N. Y. C. P.) Reports*, 546.

569. Where one sells a check of a third person without communicating to the purchaser the fact, known to the seller, that the maker of the check had failed to pay another check presented to him for payment on the day of the sale, he cannot recover upon a note given in payment for the check. *BROWN vs. MONTGOMERY*, 20 *New-York (6 Smith) Reports*, 287.

570. Where the holder of a new note, substituted for a former one, brought his action upon it, and the defendant interposed his sworn answer, alleging that the note was usurious and void, it was held, in a suit upon the original note, that the defendant should not be permitted to deny that what he then alleged under his oath was true; and if it was true, then there was no valid satisfaction of the debt. *SHEPPARD vs. HAMILTON*, 29 *Barbour's (N. Y.) Reports*, 156.

571. A certificate attached to a promissory note by the maker of such note, at the execution thereof, declaring that said note was given for value received, and will be paid when due, operates to estop the party giving it from falsifying his own statements, and he cannot set up the defence of usury against a *bona fide* holder of the note, who has discounted the same on the faith of the certificate, giving full value, under circumstances free from suspicion, and without any design to evade the statute. *MECHANICS' BANK, &c., vs. TOWNSEND*, 29 *Barbour's (N. Y.) Reports*, 569.

572. Where a sale of chattels has been fraudulently made, and the title to the chattels sold has failed, and the purchaser has commenced an action to compel the vendor to surrender a promissory note, and mortgage given for the consideration of the sale to be cancelled, and to recover damages for the fraud, the pendency of such an action will not prevent the purchaser, if afterwards sued on the note by the vendor, from setting up the fraud, and failure of title, as a defence to the action so commenced by the vendor. *WILTSIE vs. NORTHAM*, 3 *Bosworth's (N. Y.) Reports*, 162.

573. Where the facts averred, and sought to be proved, affect the validity of the note itself in the hands of the payee, and show either a want or failure of consideration, they are admissible in favor of the maker in an action by one who received the note after its maturity. *Ibid.*

574. And in such case, the pendency of an action brought in equity by the maker against the payee, to compel the surrender of the note to be cancelled, and for damages, will not preclude the maker from using these facts as a defence, when, after the bringing of such suit in equity, and after the maturity of the note, the payee transfers the note to a third person, who sues the maker thereon. *Ibid.*

575. Where a note was made for discount contrary to the statute, but such illegal assignment was not carried out, and the note was given to secure a loan, it was enforced. *NOBLE vs. CORNELL*, 1 *Hilton's (N. Y. C. P.) Reports*, 98.

576. In a suit on a joint and several promissory note, the addition of the words "survivor of WILLIAM BRUCE," as description of the defendant, in the declaration, is mere harmless surplusage, and would not prevent the suit lying against the defendant on his several liability. *BOGERT vs. VERMILYA*, 10 *New-York (6 Selden) Reports*, 477.

577. Where a note, which, by its terms, is payable eight months after its date, is in the complaint, in effect, stated to be payable generally and absolutely, the variance is immaterial. Proof by the defendants that they knew the plaintiff held the note produced at the trial; that they had given no other note of that date and amount, and no note of that amount payable generally, does not tend to show that they have been misled by the variance, no defence upon the merits being pretended. *CHAPMAN vs. CAROLIN*, 3 *Bosworth's (N. Y.) Reports*, 456.

578. A plaintiff who has an absolute right to the money due on a note, and to receive and appropriate it to his own use, when recovered, is the real party in interest, although the payee of the note may be interested in the event of the suit in such wise, that if the note be not collected he will not receive any thing as its price, or by reason of his endorsement and sale of it. *CUMMINGS vs. MORRIS*, 3 *Bosworth's (N. Y.) Reports*, 560.

579. Where a negotiable note is invalid by reason of fraudulent representations, and its collection by an endorsee would operate as a fraud upon the maker, and the payee endorses that and other notes to his landlord, (being at the time indebted to him for rent past due,) upon an agreement that the same are "to be credited to the account of the endorser, against the bills of the endorsee for rent," and some of such notes do not mature until after another quarter's rent will fall due, the endorsee does not thereby become a holder for value, so as to hold the note free of the equities. *NEW-YORK, & C., COMPANY vs. DEWOLF*, 3 *Bosworth's (N. Y.) Reports*, 86.

580. To make such an endorsee a holder for value, free from the equities, the endorser and endorsee must have intended, and in effect agreed, that the transfer and acceptance of the notes so endorsed, should extinguish the pre-existing debt. *Ibid.*

581. The acceptance of the note, bill or check of a third person from the payee, in absolute payment of a precedent debt, is receiving the same for a valuable consideration, and the holder can recover thereon, although the drawer or maker has received no consideration therefor, but advanced the same for a special purpose, under such circumstances that the payee could not recover. *PURCHASE vs. MATTISON*, 3 *Bosworth's (N. Y.) Reports*, 310.

582. A promissory note may be satisfied and discharged by the giving and accepting a new one which is valid, in place of it. But if, for any reason, such new security is void, and cannot be legally enforced, the party holding it is remitted back to his original rights as they existed at

the time the new security was taken, the consideration failing, the indebtedness remains unaffected. *SHEPPARD vs. HAMILTON*, 29 *Barbour's (N. Y.) Reports*, 156.

583. Failure of consideration is a good defence between the original parties. *BRITTON vs. HALL*, 1 *Hilton's (N. Y. C. P.) Reports*, 528.

584. A note given to a corporation by a stockholder in payment of a subscription for preferred stock is valid in the hands of the company, or of a third person, to whom it is regularly transferred, in part payment of a demand due him from the company. *MAGEE vs. BADGER*, 30 *Barbour's (N. Y.) Reports*, 246.

585. A second note given by such subscriber, in settlement of an action brought to recover the amount due upon the original note, is also valid, it having a good consideration to the amount due upon the first. *Ibid.*

586. And he cannot set up as a defence to it, the invalidity of the first note, unless he can show that he was in some way deceived and defrauded in the settlement. Per *JOHNSON J. Ibid.*

587. If the maker is defrauded, and he seeks to repudiate the second note on that ground, he must restore the old note given up on the settlement, and place the holder in the same situation in which he stood at the time of the settlement. *Ibid.*

588. When a note is made for the accommodation of the payee without restriction, and is taken for value, knowledge of its character does not constitute *mala fides*. *PITTIGREW vs. CHAVE*, 2 *Hilton's (N. Y. C. P.) Reports*, 546.

589. Where, in an action on a promissory note, the judge charged the jury, that if the plaintiff took the note with notice of facts constituting a defence thereto, it would be void in his hands; and further, that if he had knowledge of facts or circumstances which should have prompted further inquiry, that might have led to a knowledge of the facts, the note would, for that cause also, be void, it was held that the latter clause of the charge went beyond the rule of law in regard to the validity of notes in the hands of a holder for value. *MAGEE vs. BADGER*, 30 *Barbour's (N. Y.) Reports*, 246.

590. To entitle the plaintiff to a recovery on a note, against a party who has been defrauded of it, the plaintiff must show that he paid value when he took it, or incurred some responsibility, or relinquished some right, or discharged a precedent debt upon the faith and credit of the paper. *FARRINGTON vs. FRANKFORT BANK*, 31 *Barbour's (N. Y.) Reports*, 183.

591. In this case the holder took the bills to meet an indebtedness, part of which was upon drafts over due and protested. There was no express agreement that the bills should be payment or even security for the drafts, nor were the latter delivered up at the time, but subsequently the parties to the drafts were charged with their amount, and credited with the avails of the bills, which were then marked with the cancelling iron of the bank, and placed in the ordinary drawer. *Held*, that the plaintiffs did not hold the bills free from the equities. *Ibid.*

592. *Held*, that the transfer was not to be presumed to be in payment of the former debt, and was not affirmatively proved so to be. *Ibid.*

593. *Held*, that evidence of what passed between the plaintiffs and their debtor at the time of the transfer to them, and the misrepresentations of that debtor when he obtained the paper from the party defrauded, were admissible. *Ibid.*

594. Where there is full consideration for the acceptance of a bill, it is not material whether the bill is applied according to the original understanding of the parties or to another purpose. *MOORE vs. WARD*, 1 *Hilton's (N. Y. C. P.) Reports*, 337.

595. In this case, the drawers placed bonds in the hands of the drawee, with liberty to him to use them meanwhile, and to sell them on non-payment. *Held*, that there was a consideration for the acceptances. *Ibid.*

596. *Held*, also, that evidence that the drawee was interested as mortgagee in the drawer's business, was immaterial and inadmissible. *Ibid.*

597. Where a bill is expressed in a foreign currency, the amount due is to be determined by the rate of exchange at the time of the demand of payment. In the absence of such evidence, the value fixed by the act of 27th July, 1852, (10 *United States Statutes at Large*, 232,) is conclusive. *BUTT vs. HOGG*, 2 *Hilton's (N. Y. C. P.) Reports*, 81.

598. The production of a check, payable to bearer, is *prima facie* evidence of title. *TOWNSEND vs. BILLINGE*, 1 *Hilton's (N. Y. C. P.) Reports*, 353.

599. A letter written to the drawers of an unconditional order for a sum certain, payable to a person named, which specifies the account which forms its consideration, viz., twenty-four bales cotton, assuring them that such draft shall be honored from the proceeds of the cotton, does not make the drawees liable as acceptors to the payee, to whom it was subsequently remitted in payment of a debt due by the drawers to him. *LOWERY vs. STEWARD*, 3 *Bosworth's (N. Y.) Reports*, 505.

600. But where a shipment of cotton is made to J. S. & Co., and the bill of lading is forwarded to them in a letter advising them of the shipment, and also advising them of a draft on them of \$500, in favor of A. H. L., payable when the cotton is sold, and thereupon the drawees and consignees, by letter, promise the drawers that the draft shall be paid out of the proceeds of the cotton, and on application of A. H. L., the same promise is verbally made to him, and such cotton is sold, and the proceeds exceed the amount of the draft, the drawees are liable, without any formal acceptance, for the amount of the draft to A. H. L. *Ibid.*

601. Although the drawees, in such case, may have a right to require the presentation of the draft by A. H. L., yet mere delay in its presentation will not justify them in appropriating the proceeds of the cotton to other uses, even with the consent of the consignors by whom the draft is drawn. *Ibid.*

602. The holders of a bill endorsed, but not accepted, delivered it to the drawee, on his promise to pay them a less sum the next morning; parting with the bill was held to be a detriment to the holders, and a benefit to

the drawee, and therefore a consideration to support his promise. *FORWARD vs. HARRIS*, 30 *Barbour's (N. Y.) Reports*, 338.

603. Where two drafts were drawn, in blank as to the amount, upon the defendants, and accepted by them, payable to the order of W., the drawer, with the understanding that the sums to be inserted should not in the aggregate exceed \$1,000, and W. exceeded this limitation of his authority, and negotiated the drafts to the plaintiffs, before maturity, who paid him the money upon them without notice of such excess of authority, it was held, that the plaintiffs were *bona fide* holders for value, and entitled to recover. *GRIGGS vs. HOWE*, 31 *Barbour's (N. Y.) Reports*, 100.

604. *Held*, also, that the acceptors having themselves put it into W.'s power to do the wrong, they could not be allowed to shift the loss from themselves and cast it upon a *bona fide* holder for value. *Ibid.*

605. A bill of exchange addressed to the drawers at the place in which they reside may be accepted, payable at some particular bank or place within the limits of such place. *NIAGARA, &C., BANK vs. FAIRMAN, &C., COMPANY*, 31 *Barbour's (N. Y.) Reports*, 403.

606. Where a bill addressed to the drawees at the place of their residence is accepted, payable at a different town, this is a material variation; and a presentment at that other town will not charge the drawers. *Ibid.*

607. The payee of a protested bill of exchange carried it, with the notarial certificate attached, to the drawer's place of business, placed it there before him, and notified him of the dishonor. *Held*, sufficient, as no precise words and no particular form were necessary in giving notice, nor was it required to be in writing. Any notice describing the bill with sufficient certainty, so as to enable the party to identify it, and communicating its dishonor, is sufficient. *BUTT vs. HOGE*, 2 *Hilton's (N. Y. C. P.) Reports*, 81.

608. The holder of a bill payable on demand, in order to charge the drawer, must show a presentment for payment within a reasonable time, or that no injury has been sustained. *VANTROT vs. McCULLOCH*, 2 *Hilton's (N. Y. C. P.) Reports*, 272.

609. Where the drawer and holder were in Ohio, and the drawee in New-York city, a delay of fifteen days in making presentment was held to be unreasonable, in an action against the drawer. *Ibid.*

610. A promissory note payable on demand with interest, is a continuing security; an endorser remains liable until an actual demand, and the holder is not chargeable with neglect for omitting to make such demand within any particular time. *MERRITT vs. TODD*, 9 *Smith's (N. Y. Court of Appeals) Reports*, 28.

611. Whether, however, the lapse of time, or a failure to pay interest at the customary periods, may not subject the holder of a note after transfer, to a defence existing in favor of the maker against the first holder. *Ibid.*

612. A statement in the written warrant of a municipal corporation for the payment of a sum certain at a fixed time to E. S., or order, that the same is payable "out of any funds belonging to the city not before specially

appropriated," and "chargeable to general city fund," does not deprive the instrument of the character of a negotiable promissory note. *BURN vs. SIMS*, 9 *Smith's (N. Y. Court of Appeals) Reports*, 570.

613. An instrument by which a rail-road corporation promises to pay, in Boston, to W. S., or order, "\$1,000, with interest semi-annually, as per interest warrants hereto attached, as the same shall become due, or upon the surrender of this note, together with the interest warrants not due, to the treasurer, at any time until six months of its maturity," to issue stock in exchange therefor, is a negotiable promissory note. *HODGES vs. SHULER*, 8 *Smith's Reports*, 114.

XIX. NORTH CAROLINA.

614. Where one signs a note in blank, and delivers it to another to be filled up and used by him, the party is bound to others, to whom it has come in the course of business, by the note as filled up, just as he would have been if it had been full before his signature. *McARTHUR vs. McLEOD*, 6 *Jones' (Law) North Carolina Reports*, 475.

615. Where a note is given for a real business transaction, although it may be expressed to be payable at a bank, it is nevertheless negotiable in the market generally. It is only restricted when it appears on the paper to be negotiable at a bank, and nowhere else. *Ibid.*

616. Where A. was indebted to B., and drew a note negotiable and payable at a bank, which was endorsed by C. and D., for the accommodation of the maker, and delivered to the creditor of A., by whom it was endorsed to E. for a valuable consideration, it was held, that the latter could recover against the maker of such note, or any of the endorsers thereon, although the same had never been discounted at the bank, nor offered for such purpose. *RAY vs. BANKS*, 6 *Jones' (Law) North Carolina Reports*, 118.

617. Although notes and endorsements as simple contracts require a consideration, it has long been held that they import a consideration *prima facie*, so as to throw the burden on the other side to show the want of a consideration. *McARTHUR vs. McLEOD*, 6 *Jones' (Law) North Carolina Reports*, 475.

618. An obligation to pay a sum of money on a given day, "to be discharged in any good trade, to be delivered at any one of several places," imposes on the debtor the burden, if he would save the condition, of giving notice of the place where he will have the goods, and of having them there on the day duly set apart. *BARRETT vs. ELLER*, 6 *Jones' (Law) North Carolina Reports*, 550.

619. Where the protest of a notary public stated that he presented a bill, which purported to be drawn on a firm, to A., one of the members thereof, it was held to be evidence that A. was a member of that firm, and that the presentment was properly made. *ELLIOT vs. WHITE*, 6 *Jones' (Law) North Carolina Reports*, 98.

XX. OHIO.

620. Where a note reads thus: "One year after date, *we, or either of us, as directors* of the Hamilton, Middletown and Germantown Turnpike road, promise to pay J. K., or order, five hundred dollars, for value received, with eight per cent. interest until paid," and dated and signed by the makers, without further designation of official capacity, they are liable individually. *TITUS et al. vs. KYLE*, 10 *Critchfield's (Ohio) Reports*, 444.

621. Where, in such case, no fraud or mistake in the execution of the instrument is averred by the makers, they will not be permitted to set up an *intention* on their part not to bind themselves individually, but only in their representative capacity as directors, when such intention is different from the legal import of the writing itself, on its face. *Ibid.*

622. Where the payee and holder of a promissory note, before its maturity, agrees with the maker to give further specified time for its payment, in consideration of a sum of money then and there paid him by the maker, such agreement is a valid contract, and may be set up as a temporary bar in an action brought before the expiration of such further time, against the maker by an assignee, who acquired the note after maturity, or with notice. *PECK vs. BECKWITH*, 10 *Critchfield's (Ohio) Reports*, 497.

623. The effect of the seizure of a note, under process of law, can gain no force from the rules of the commercial law, which rules are only intended to regulate the right of parties depending upon their voluntary acts and agreements. The seizure of a note payable to bearer, or endorsed in blank, would not constitute the officer an endorsee or holder in the commercial sense of those terms. The officer would hold under the statute, giving him the authority to seize, and not by contract. He would have the rights which that statute gave, and not those of an endorsee or holder, in the usual course of business. *Per GHOLSON, J.* 10 *Critchfield's (Ohio) Reports*, 145.

624. Where L. made his promissory note, payable on a future day, to the order of M. H. & Co., and before delivery to the payees, T. M., on being applied to by L., refused to become responsible thereon as a maker, but, for the accommodation of L., willing to become responsible thereon as an endorser, and that only for this purpose wrote his name on the back of the note in blank, of all which the payees had notice; and the payees afterwards transferred the note, before due, by delivery only, to those under whom the plaintiffs claim—*Held*, 1st. The plaintiffs hold an equitable title only to the note, and subject to all the equities existing between the original parties thereto. 2d. By the terms of his contract, T. M. assumed the obligations of an endorser only, and the note having never been endorsed to the plaintiffs, they cannot, on this state of facts, recover against him. *SEYMOUR & Co. vs. LEYMAN et al.*, 10 *Critchfield's (Ohio) Reports*, 283.

625. A note in the following form: "June 20, 1855. For value received, I promise to pay to the order of JAMES A. TIPTON, ninety-five dollars, in current money of Ohio, *when I can make it convenient, with ten per cent. interest till paid.* SAMUEL LEWIS. [Seal.]—creates a legal liability on

the maker, and is payable within a reasonable time after its date. *LEWIS vs. TIPTON*, 10 *Critchfield's (Ohio) Reports*, 88.

626. Where the endorser, in blank, of a promissory note, executes a mortgage to the endorsee, conditioned that the mortgagor shall pay, or cause to be paid, the said note to the mortgagee at maturity, the lien of such mortgage will not be discharged by the failure of the mortgagee to make such demand, and give such notice of non-payment as would be necessary to charge the endorser personally. *HILTON vs. CATHERWOOD et al.*, 10 *Critchfield's (Ohio) Reports*, 109.

627. Where a person, then residing in Ohio, sold a tract of land to two persons, also residing in Ohio, and took notes payable to his order, and a mortgage to secure the purchase money, and then removed to New-Jersey, where, under a writ of attachment issued against him as an absconding debtor, the notes were seized and afterwards sold: *Held*, that the notes were merely evidences of indebtedness, and the seizure of them in New-Jersey gave no power to divest the property in the debt secured by the notes and mortgage, which is to be regarded as existing where the makers of the notes, the debtors, resided. *OWEN vs. MILLER et al.*, 10 *Critchfield's (Ohio) Reports*, 136.

628. The doctrine of *lis pendens* does not apply to negotiable paper before due. *STONE vs. ELLIOT*, 11 *Critchfield's (Ohio) Reports*, 252.

629. A certificate of deposit issued by a banking company for \$4,000 in currency, payable in like funds, to the order thereon of the depositor, with interest, is a negotiable promissory note, although the term *currency* was regarded at the time and place of the transaction as including the bank bills of sundry specie-paying banks outside of the State of Ohio, as well as those of the same character within the State. *HOWE vs. HARTNESS, HILL & Co.*, 11 *Critchfield's (Ohio) Reports*, 449.

630. Where such certificate was negotiated two days after its date, to a party receiving it in good faith for a valuable consideration, it will not be regarded as over due at the time. A reasonable time must have elapsed for the purpose of negotiation, or presentment for payment, before it will be regarded as over due. *Ibid.*

631. The assignee, in such case, can enforce payment of the note by the maker, and the latter is, therefore, not liable to an attaching creditor of the depositor under the 205th section of the Code. *STONE vs. ELLIOT*, 11 *Critchfield's (Ohio) Reports*, 252, 449.

632. A note specifying no time of payment, but providing for interest at the rate of ten per cent. from date, interest to be paid annually, is, in legal effect, payable immediately. *JONES et al. vs. BROWN*, 11 *Critchfield's (Ohio) Reports*, 601.

633. In an action on a note, the endorsers who endorsed to the maker, being sued by a subsequent endorsee, answered *inter alia*, that they were accommodation endorsers, and this was held an admission which would cure a defect upon this point in the allegations of the petition. *ERWIN vs. SHAFFER*, 9 *Ohio (New Series) Reports*, 43.

634. Under the averment in a declaration, of due demand and notice of the dishonor of a bill of exchange, the declarations of the defendant showing an acknowledgment of liability upon, and a promise to pay the amount of the bill, are admissible in evidence. *MEYERS et al. vs. STANDART et al.*, 11 *Critchfield's (Ohio) Reports*, 29.

635. A bill of exchange addressed generally to the drawee, in a city, may be accepted payable at a particular bank, in the same city, and a presentment for payment may be made at the counter of such bank without a previous notice to, or the assent of the drawer. *Ibid.*

636. The circumstance that a draft for money, otherwise in the usual form of a check, is payable on a future specified day, is *prima facie*, but not *conclusive* evidence that the instrument is a bill of exchange, and, as such, entitled to days of grace. *ANDREW & WILSON vs. BLACHLEY & SIMPSON*, 11 *Critchfield's (Ohio) Reports*, 89.

637. But when such instrument is drawn upon a bank or banker, and is designed by the parties as an absolute transfer and appropriation to the holder of so much of an actually existing fund belonging to the drawer, in the hands of the drawee, it is, nevertheless, a check, and not a bill of exchange, and not entitled to days of grace. *Ibid.*

638. The drawers of a bill, being partners, dissolved their partnership after the maturity and protest of the bill, but gave no notice thereof to the payees of the bill. Some time after the dissolution, the agent of the payees called on one of the partners for settlement of the bill, who referred him to another, and by him declarations were made, that, although there had been a defect in the mode of giving notice, which discharged the drawers, they would not take advantage of it, but would settle when they were satisfied nothing could be made from the acceptors. The acceptors were wholly insolvent, and the action was not brought on the bill until after a considerable lapse of time. On the trial, the other partners objected to the admission in evidence of the declarations. *Held*, that they were properly admitted in evidence, as showing that there had been due notice of dishonor of the bill, and charging all the partners with liability thereon. *MEYERS et al. vs. STANDART et al.*, 11 *Critchfield*, 29.

639. The fact that in a proceeding in Chancery, under the 16th section of the act of March 14th, 1831, "directing the mode of proceeding in Chancery," (3 *Chase*, 1697,) the maker of a negotiable note has been decreed to pay the amount thereof into court, to be applied towards the satisfaction of a judgment against a defendant in such proceeding, who was the holder of such note at the time of the service of process upon such holder, does not constitute a defence to a subsequent action on the note by a *bona fide* holder thereof, and who received the same for value, and without actual notice of the pendency of the proceeding in Chancery, after the service of process upon his endorser. *STONE vs. ELLIOT*, 11 *Critchfield's (Ohio) Reports*, 252.

640. M. executed to B. a mortgage, to secure the payment of four promissory notes, payable at different times. The mortgage contained a

stipulation that a default to pay any one of said notes at maturity, should operate as a forfeiture of the mortgage, and all the notes should be considered due and payable. Before the maturity of either of the notes, B., by endorsement in blank, transferred to S. and W. all said notes, except the one first falling due, and at the same time transferred said mortgage to them, by endorsing thereon an assignment of all his interest in the mortgaged premises, and the several sums of money thereby secured to be paid, excepting and reserving therefrom the amount of the note retained by himself, and assigning all his estate, right, title and interest in said premises, "except as aforesaid." None of the notes having been paid.

641. Where a joint and several note, made by A. and B., with C. as surety, comes, by assignment made for the benefit of creditors, into the hands of trustees of the payee, of whom A. was one, the trustees can sue on it; and it does not, on maturity, become assets in their hands, and is not then to be considered as paid, in favor of the surety, but the trustees can, after maturity, collect it from him. *ROSSMAN vs. McFARLAND*, 9 *Ohio Reports*, 369.

642. It is a matter of legal presumption, though not conclusive, where a note, not due, is endorsed and delivered to the makers, that this is done for their accommodation, and its payment is not to be presumed from such holding by them. *SUTLIFF J.*, dissenting. *ERWIN vs. SHAFFER*, 9 *Ohio (New Series) Reports*, 43.

643. Therefore, a subsequent endorsee from the makers, who take by endorsement, may recover from prior endorsers. *SUTLIFF J.*, dissenting. *Ibid.*

644. If a note, payable generally, and endorsed for accommodation, is, at the time of obtaining discount by the maker, altered by making it payable at a particular place, without the knowledge or consent of the endorser, he is thereby discharged. *STURGES vs. WILLIAMS*, 9 *Ohio (New Series) Reports*, 443.

645. Where, at the time of the negotiation of a loan, there was an understanding that usurious interest was to be paid annually, in advance, in addition to the highest legal rate, to be expressed in the note, and to be paid at the end of any year during which the loan continued, it being contemplated to continue the loan from year to year, at the wish of the borrower, upon the terms stated; but to secure the loan, a note with sureties was given and received, which, though expressing the rate of interest, and that the interest was to be paid annually, was, in legal effect, payable immediately. *Held*, that the understanding of the parties was controlled by the terms of the note, and that the giving time afterward, in pursuance of the understanding, was not giving time under an obligatory contract, and did not discharge the sureties. *McCOMB vs. KITTRIDGE*, 14 *Ohio Reports*, 348, cited and explained, 11 *Critchfield's Reports*, 601.

646. Declarations of a former holder of a bill, transferred to the plaintiff after maturity, are competent to show that before such transfer the

defendants were discharged from liability. *HOLLISTER vs. REZNOR*, 9 *Ohio Reports*, 1.

647. Affixing seals to an instrument, in the form of a bill of exchange, does not, in Ohio, vary the commercial characteristics of the paper. It is still a bill of exchange, and so denominated. Per PECK, J. *BAIN vs. WILSON*, 10 *Critchfield's (Ohio) Reports*, 9.

XXI. PENNSYLVANIA.

648. The maker or endorser of an accommodation note cannot set up want of consideration as a defence against it, in the hands of a third person, even though it be placed there merely as collateral security by the party entitled to negotiate it. *WORK vs. KASE*, 34 *Pennsylvania State Reports*, 138.

649. If a note be endorsed for the accommodation of the maker, with the express understanding between the maker and the endorser that certain collaterals should be deposited with a third person to secure its payment, it is a good defence to the endorser that such collaterals were not deposited in accordance with the terms of the agreement. It is not necessary that such agreement should have been made between the endorser and endorsee. *BAUMGARDNER vs. REEVES*, 35 *Pennsylvania State Reports*, 250.

650. An endorser, who is not discharged by the omission to give notice of non-payment in consequence of the provisions of the act of 5th April, 1849, occupies the position of a surety, and is not discharged by a mere indulgence given to the maker. *ASHTON vs. SPROULE*, 35 *Pennsylvania State Reports*, 492.

651. An omission by the maker to secure the endorser, in accordance with an expressed intent to do so, will not discharge the latter, unless the former was prevented, by the act of the holder of the note, from carrying his intention into effect. *Ibid.*

652. Although a general partnership between two is not established by the admission of one of the alleged partners, yet, where two are sued as co-promissors, upon a note signed by one, and there is proof of an admission of liability by the other, such admission is evidence that the signing party was the agent to make the promise. *PAINTER vs. AUSTIN*, 1 *Wright's (Pennsylvania) Reports*, 458.

653. The rule laid down in *WALTON vs. SHELLY*, as understood in Pennsylvania, extends only to negotiable paper actually negotiated, and in the hands of an innocent holder, who took it without any previous notice of any original defect on it; and it excludes only those parties whose names were in the paper when it was transferred to the holder. *HAWKINS vs. CREE*, 1 *Wright's (Pennsylvania) Reports*, 494.

654. Therefore, where a note was not endorsed, but assigned to the holder, with a general warranty by the assignor and a third party, and there was evidence in the cause to the effect that the holder had admitted that he thought there was something wrong about it, and did not want to

take it, unless the assignor would guaranty it, which he was for a long time unwilling to do, &c., it was *held*, that the payee of the note was incompetent as a witness for the maker. *Ibid.*

655. In an action by the endorsee of a promissory note against one of two makers, where the defence is that it was fraudulently made and put in circulation, &c., the plaintiff is bound to prove that he is a *bona fide* holder, but not unless he have notice, previous to the trial, that such proof will be required of him. *ALBERTZ vs. MELLON*, 1 *Wright's (Pennsylvania) Reports*, 367.

656. A special plea, setting forth such a defence, is notice under this rule; and possibly, an affidavit of defence to the same effect, filed by defendant, would be sufficient if offered in evidence as notice; but the short plea of "no partnership" is not sufficient for this purpose; and if no other notice be given to the plaintiff, nor any proof offered to destroy it, the presumption that he is a *bona fide* holder will not be affected on the trial. *Ibid.*

657. In a suit by the endorsee of a promissory note, executed by one of two partners, in the firm's name, where one of the defendants alleged that the note had been fraudulently issued, without his authority, and after the dissolution of the partnership, and notice of the dissolution to the payee was proved before the date of the note, but none was shown to have been given the plaintiff, nor any evidence that he was not a *bona fide* holder, the court instructed the jury that the defence had failed. *Held*, that there was no error in the instruction. *Ibid.*

658. Where two bought a mill jointly, and not as partners, and gave joint notes for the purchase money, the funds of the firm afterwards received were held not to be applicable to the share each one was bound to pay, and that the court below were right in refusing to charge that the possession of the notes by one of the partners created no liability for contribution. *WALL'S ADMINISTRATORS vs. FIFE*, 1 *Wright's (Pennsylvania) Reports*, 394.

659. To make an agreement, to give time to the maker effectually to discharge the surety, there must be a consideration for it. *ASHTON vs. SPROULE*, 35 *Pennsylvania State Reports*, 392.

660. Time given to the endorser of a note, or a composition accepted from him by the holder, does not discharge the drawer, yet the maker of accommodation paper is discharged to the extent of the payments made by the endorser to the holder. *LOVE & SON vs. BROWN, BROTHERS & Co.*, 2 *Wright's (Pennsylvania) Reports*, 307.

661. If a note, purporting to be joint and several, be signed by one person on its face, and by two others, neither of whom is the payee, on the back, the latter are *prima facie* to be treated as endorsers, and not as joint-makers. *GULDIN vs. LINDERMAN*, 34 *Pennsylvania State Reports*, 58.

662. In case of the death of the endorser of a promissory note shortly before its maturity, if his decease and the granting of letters testamentary to his executors be unknown to the holder, it is sufficient, in order to

charge his estate, to direct notice of non-payment to the deceased endorser, by name, at the post-office nearest his late place of residence. *LINDERMAN vs. GULDIN*, 34 *Pennsylvania State Reports*, 54.

663. A notarial certificate, which states that, during business hours, the notary went with the note to the place of business of the maker, in order to demand payment thereof, and found the same closed, and no one there to answer respecting the note, is evidence of the facts therein set forth; it is not necessary that it should state the place at which the presentment was made. *BAUMGARDNER vs. REEVES*, 35 *Pennsylvania State Reports*, 250.

664. But where a party has no place of business, or residence, or has removed, it seems that it is material to set forth the nature of the inquiries made to ascertain his whereabouts, in order to show due and reasonable diligence to make demand. *Ibid.*

665. Where the facts are such as dispense with an actual presentment and demand, and a legal equivalent is relied on, as where the maker has removed out of the country, then such facts must be averred in the declaration. *BAUMGARDNER vs. REEVES*, 35 *Pennsylvania State Reports*, 250.

666. An action of debt will lie, under the act of 21st March, 1806, by a remote endorsee against the first endorser of a promissory note. *LOOSE vs. LOOSE*, 12 *Casey's Pennsylvania Reports*, 538.

667. An acknowledgment of liability and a promise to pay, made by an endorser after default of payment by the maker, dispenses with proof of presentment and notice, and throws on the defendant the double burden of proving *laches*, and that he was ignorant of it. *Ibid.*

668. Such a promise and acknowledgment raise a presumption that the endorser knew of the dishonor of the note; and if there be evidence to the contrary, it is a question for the jury, whether the presumptive knowledge arising from the promise has been rebutted by the defendant. *Ibid.*

669. A visit to the maker's place of business during business hours, for the purpose of making a presentment, and finding it closed, is equivalent to an actual presentment and demand; and a notarial certificate, setting forth such facts, may be given in evidence, under a declaration averring an actual presentment and demand. 35 *Pennsylvania State Reports*, 250.

670. A presentment at the maker's usual place of business, during business hours, there being no one there to answer, is a sufficient demand to charge the endorser; for the maker is bound to have a suitable person there to answer inquiries, and pay his notes, if there demanded. *Ibid.*

671. Under the act April of 5th, 1849, and the saving clause of the repealing act of April 8th, 1851, where the endorser's residence or place of business is not added to his endorsement, a protest made at any time before suit brought, is receivable in evidence against him; and such endorser is not discharged by the omission to give notice of non-payment at the maturity of the note. *ASHTON vs. SPROULE*, 35 *Pennsylvania State Reports*, 492.

672. At what time a note payable on demand, made in another State, and governed by its laws, is to be considered overdue, so as to let in a defence against an endorsee, which would be available against the payee, is a question of fact for the jury, under proper instructions from the court. *BARBOUR vs. FULLARTON*, 12 *Casey's Pennsylvania Reports*, 105.

673. The equitable assignee of a chose in action takes it subject to all the equities existing between the original parties, unless he has made inquiry of the debtor, and the latter, by his conduct, has estopped himself from setting up the defence. The only effect of the act of 28th May, 1715, is to enable the assignee to sue in his own name. *FAULL vs. TINSMAN*, 12 *Casey's Pennsylvania Reports*, 108.

674. It is a good defence to an action by an endorsee against the maker of a promissory note, that it was made for the accommodation of the payee, without consideration, and negotiated by him when overdue. *BOWER vs. HASTINGS*, 12 *Casey's Pennsylvania Reports*, 285.

675. A certificate of deposit, payable to the depositor, or order, in currency, is not a negotiable instrument, and the endorsee thereof cannot maintain an action upon it in his own name. *LOUDON SAVINGS FUND SOCIETY vs. HAGERSTOWN SAVINGS BANK*, 12 *Casey's Pennsylvania Reports*, 498.

676. The equitable transferee of a non-negotiable note takes it subject to all the equities existing between the original parties at the time of the transfer. *WHITE vs. HEYLMAN*, 24 *Pennsylvania State Reports*, 142.

677. If one give a promissory note to another in order to obtain possession of his goods which are wrongfully withheld, it is without consideration between the parties to it. *Ibid.*

678. The mere endorsement of such an instrument, is not a legal assignment of it, such as will enable the endorsee to sue in his own name. *LOUDON SAVINGS FUND SOCIETY vs. HAGERSTOWN SAVINGS BANK*, 12 *Casey's Pennsylvania Reports*, 498.

679. In an action on a note, purporting to be made by a firm, in a court whose rules provided that the execution of a note, &c., declared on, should be taken to be admitted, unless the defendant, at or before the time of filing his plea, should have, by affidavit, denied that such note, &c., was executed by him, it is sufficient to put the plaintiff on proof of execution, that one of the defendants in his affidavit set forth that the note sued on was not made or given by him, and that he knew nothing about it. *HOGG vs. ORGILL*, 34 *Pennsylvania State Reports*, 344.

680. A. sent to his correspondent eight bills of exchange, with the dates, amounts, names of drawers, and drawees, and times of payment, in blank, but accepted by A., four being written "first of exchange," &c., and four "second of exchange," &c., with directions to fill them up, and have them discounted for A.'s benefit. The correspondent procured to be discounted the four first of exchange; afterwards he filled up two of the "second of exchange," but not corresponding with the first as to dates or amounts, and had them discounted by a bank, which took them in good faith, in ignorance of all the circumstances. *Held*, that it was a question for the

court, not for the jury, whether the words "second of exchange, first unpaid," were notice to the bank of the correspondent's want of authority to negotiate them. *BANK OF PITTSBURG vs. NEAL*, 22 *Howard's United States Reports*, 96.

681. That the bills were not parts of sets, but were entrusted to the correspondent as eight single bills, and, therefore, that the acceptors must pay them to the bank. *Ibid.*

682. The acceptor of a bill of exchange is not to be allowed to vary the terms of his acceptance by parol evidence. *MASON vs. GRAFF*, 35 *Pennsylvania State Reports*, 448.

683. Where a bill is accepted "payable when in funds," the burden is upon the plaintiff to show that the acceptors were in funds. In such case, evidence tending to prove that a note deposited with the acceptors was subject to a prior appropriation by the drawer, is admissible under the general issue. *Ibid.*

684. The alteration of a promissory note by the payee, after its execution, without the authority of the maker, by the addition of a particular place of payment, will render it void, as to the maker, in the hands of an endorsee. *SOUTHWARK BANK vs. GROSS*, 35 *Pennsylvania State Reports*, 80.

XXI. SOUTH CAROLINA.

685. Where one endorses a note, drawn by a third person, and payable to plaintiff or bearer, he may be charged as drawer, endorser, or guarantor, according to the circumstances as shown by the evidence, even though the endorsement be made after the note fell due; and he will be held liable in the capacity in which he intended to make himself liable. *McCELVEY vs. NOBLE*, 12 *Richardson's (South Carolina) Law Reports*, 167.

686. A. sued C. as drawer on a promissory note drawn by B., payable to the order of A., and endorsed by C. The proof was, that B. bought property from A., and was to give him his note as security. The note was drawn, signed by B., and delivered to him, who took it off and returned it with C.'s signature on the back. *Held*, that C. was liable as drawer. *MCCRACKEN vs. BIRD*, 12 *Richardson's (South Carolina) Law Reports*, 554.

687. A., after the making of the note, in order to negotiate it, endorsed it by writing his name above C.'s. *Held*, that A. did not, by such endorsement, discharge C. from his liability as drawer. *Ibid.*

688. The execution of a note attested by a free negro, cannot be proved by evidence of the handwriting of the witness. *JONES vs. JONES*, 12 *Richardson's (South Carolina) Law Reports*, 116.

689. The subscribing witness to a promissory note, several in form, but having the names of A. and B. as drawers, testified that he saw A. alone sign it, and that B. was not present. *Held*, that the act of 1802 did not apply to the case, and that B.'s signature was to be proved by the ordinary evidence of handwriting. *TUTEN vs. STONE*, 12 *Richardson's (South Carolina) Law Reports*, 448.

690. Where a check is drawn by a depositor on a bank having sufficient of his funds to meet the check, the holder, on giving notice to the bank, has the right to be paid; and if payment be refused, may maintain an action of assumpsit against the bank, on the implied promise which the law raises in his behalf; and this is especially true where the charter of the bank declares that it "shall receive money on deposit, and put away the same to order, free of expense." *FOGARTIES vs. STATE BANK*, 12 *Richardson's (South Carolina) Law Reports*, 518.

691. A promise in writing to pay a certain sum of money to A., or order, at a certain time and place, "with exchange on New-York," is not a promissory note within the statute of ANNE, because the sum to be paid cannot be fixed by the law alone without resort to extrinsic circumstances. *READ vs. McNULTY*, 12 *Richardson's (South Carolina) Law Reports*, 445.

692. Whether the obligee of a sealed note, who endorsed it in blank, can be made liable on parol evidence showing that he intended to charge himself, *quere?* *LANNEAU vs. ERVIN*, 12 *Richardson's (South Carolina) Law Reports*, 81.

XXII. TENNESSEE.

693. The recital of the consideration in negotiable paper is unusual, but its negotiability is not thereby affected. *RYLAND vs. BROWN*, 2 *Head's (Tennessee) Reports*, 270.

694. If a party become surety on a note, with the understanding that it shall be passed to a particular individual, and to no one else, he is not liable on said note unless passed to that person. But if he signed as surety generally, he would be liable, although the note was passed to another than the payee, and the holder thereof could maintain a suit in the name of the payee for his use. *PERKINS vs. AMENT*, 2 *Head's (Tennessee) Reports*, 110.

695. A. held a note of B., which he transferred to C., to indemnify him as his (A.'s) surety on a note to D. C. paid D., and B.'s note was then put in suit, and judgment recovered thereon. E., a creditor of A., attached the judgment. *Held*, that C.'s equity was superior to E.'s. *SUGG vs. POWELL*, 1 *Head's (Tennessee) Reports*, 221.

696. In the case of negotiable paper, no notice to the payer is necessary to perfect the title in the assignee. *Ibid*.

697. *Held*, that although B. had no notice of the transfer to C., C.'s title was good. *Ibid*.

698. The acts and declarations of C., prior to the filing of E.'s bill, are evidence of C.'s title. *Ibid*.

699. A bill of exchange was drawn by two partners. Money was retained by one partner to discharge the bill of exchange, but he appropriated \$700 of the fund to his own individual debts, and the bill, to that extent, remained unpaid. After the death of this partner, one of his administrators, together with the other partner, executed a note in bank, in payment of the \$700. This note was endorsed by the endorsers on the

bill of exchange. The partner, who was joint maker of the note, paid it after judgment, at the request of the administrator, who promised to refund the amount paid. The estate of the deceased partner proved to be insolvent, and his administrator, who had jointly executed the note, refused to refund the money out of his individual means. The partner who paid the debt moved for judgment, as surety, against him. *Held*, that it did not appear that it was understood by the parties that the administrator was to be individually liable for the debt, and become the principal in the note; and if it did so appear, that there was no consideration to support the promise, and that it could not be enforced. *BATES vs. WHITSON*, 2 *Head's (Tennessee) Reports*, 155.

700. By the act of 1856, chapter 75, a motion for judgment for money paid "as endorser," is only given in favor of accommodation endorsers. *ALLEN vs. WOOD*, 1 *Head's (Tennessee) Reports*, 436.

701. Notes were endorsed by A. in blank as to the amount, and delivered to B., the maker, for his accommodation, to be used for a sum not exceeding \$500. B. filled them up to the amount of \$1,000. *Held*, that A. could not plead this in an action against him on the notes by a *bona fide* holder, ignorant of this excess of authority. *GRISSEM vs. FITZ*, 1 *Head's (Tennessee) Reports*, 332.

702. Protest of a bill or note must be made by a notary of the county in which the place of payment is fixed. *NEELY vs. MORRIS*, 2 *Head's (Tennessee) Reports*, 595.

703. If a note is assigned to a party before due, with notice, actual or constructive, that it is void, and subject to be impeached in the hands of the payee, either for fraud, or want of failure of consideration, he will hold it subject to the same equities to which it was liable in the hands of the payee. *RYLAND vs. BROWN*, 2 *Head's (Tennessee) Reports*, 270.

704. Whatever is sufficient to put a person upon inquiry, is equivalent to notice. *Ibid*.

705. The recital in a note, that it was given for land, does not require a person to examine, at his peril, the records, before taking such note, for the purpose of ascertaining whether, as between antecedent parties, liens might not exist, growing out of unpaid purchase money. He would, at most, only be required to know that the maker of the note was in the peaceable possession of the land, under a title sufficient in law to invest him with a fee simple estate, accompanied with the usual covenants for his indemnity. *Ibid*.

706. A notary public is a public officer, and if he certify in or on his protest, that he notified the drawers and endorsers, it is *prima facie* good; and it is not necessary that he should state the time when the notice was given, the post-office to which it was sent, &c. *GOLLADAY vs. THE BANK OF THE UNION*, 2 *Head's (Tennessee) Reports*, 57.

707. If the drawer of a bill has no effects in the hands of the drawee to meet it, or some good reason to believe it will be accepted, he is bound to the payee or holder without demand or notice. It is, however, pre-

sumed that the drawee has such effects, until the contrary appears; and this presumption is not changed by a waiver or want of acceptance of the bill. *Ibid.*

708. If the drawer of a bill, with the knowledge that he is discharged from its payment for want of notice, acknowledge the debt, and promise to pay it, he thereby waives demand and notice, and is liable for the same. *Ibid.*

709. The acceptor of a bill who has paid the amount out of his own funds, may maintain assumpsit against the drawer, on the implied promise of the drawer. But the mere fact of acceptance without payment, gives him no right of action. *PLANTERS' BANK vs. DOUGLASS, 2 Head's (Tennessee) Reports, 699.*

710. And not being able to maintain an action, directly, against the drawer without payment, he cannot do so, indirectly, by a bill in chancery to foreclose a mortgage executed by the drawer to secure the acceptor. *Ibid.*

711. When a bill is payable or endorsed specially to a firm, it must be proved that the firm consists of the persons who sue as plaintiffs on the record. *2 Head's (Tennessee) Reports, 595.*

712. If a mortgage is executed to indemnify an acceptor for money actually paid upon such acceptance, the acceptor not having the right to foreclose said mortgage until payment, the endorsee or holder of such bill cannot demand a foreclosure of the mortgage. *PLANTERS' BANK vs. DOUGLASS, 2 Head's (Tennessee) Reports, 699.*

713. The transfer of negotiable paper in payment of, or as security for a pre-existing debt, is not a transfer in the due course of trade, so as to protect the paper in the hands of the holder from the equities to which it was subject between the original parties. *KING vs. DOOLITTLE, 1 Head's (Tennessee) Reports, 77.*

714. By the law of Pennsylvania, notes of third parties, transferred as collateral security for a pre-existing debt, remain subject to the equities between the original parties. *Ibid.*

715. A note was given to secure payment of the purchase money for a piece of land, the vendors giving their bond for title to be made on such payment. They had at no time any title, legal or equitable, and knew this fact when making the contract. *Held*, a failure of consideration, and that, moreover, the contract might be rescinded for fraud. *MULLINS vs. JONES, 1 Head's (Tennessee) Reports, 517.*

716. If a note given for land is transferred to an innocent party, it would be premature, on the part of the maker of said note, to commence suit to avoid payment thereof, on the ground of failure of the consideration, before there is an attempt to subject the land to a prior equity, if such exists. *RYLAND vs. BROWN, 2 Head's (Tennessee) Reports, 270.*

717. No suit can be maintained in the courts of Tennessee on a note executed in this State, stipulating on its face for usurious interest, if no

other place of payment is designated where a greater rate of interest is allowed. *THOMPSON vs. COLLINS*, 2 *Head's (Tennessee) Reports*, 441.

718. If a note purports on its face to have been executed beyond the limits of the State, and the declaration avers that fact, and contains a stipulation for the payment of ten per cent. if not paid at maturity, it is competent for the defendant to put in issue, by a proper plea, the fact as to whether it was executed in Tennessee or not. *Ibid.*

719. Where notes signed in blank were filled up by the holder for an amount beyond the authority given to him, it was held that a plea of *non est factum*, in such case, must aver a knowledge by the endorsee of such fraud. *GRISCOM vs. FIFE*, 1 *Head's (Tennessee) Reports*, 332.

720. A plea alleged fraud and failure of consideration of the note in suit, and was demurred to. *Held*, that as the demurrer admitted the truth of the plea, it must be overruled, the failure of consideration avoiding the note. *MULLINS vs. JONES*, 1 *Head's (Tennessee) Reports*, 517.

721. Where several persons sue as endorsees of a bill, if the bill is endorsed in blank, there is no necessity for their proving that they were in partnership together, or that the bill was endorsed or delivered to them jointly. The endorsement in blank conveys a joint right of action to as many as agree in suing on the bill. *NEELY vs. MORRIS*, 2 *Head's (Tennessee) Reports*, 595.

XXIII. TEXAS.

722. It is no defence to one of several joint and several makers of a note, given to an administrator in payment for land of his intestate's estate, sold by him, that, in fact, the defendant was only a surety on such note, and that it was secured by a mortgage on the land; that the principal on the note was dead, and no administrator had been appointed on his estate, and that the land mortgaged, which was of value sufficient, had not been sold for the payment of the debt. *WALKER vs. COLLINS*, 22 *Texas Reports*, 189.

723. In an action against several, on a promissory note, the defendants pleaded that they gave the note as sureties for the purchase of property, at an administrator's sale, in the expectation that the administrator would perform his duty to the estate he represented by also taking from the purchaser the mortgage security required by law, and by the order of sale from the probate court. There was no allegation of any fraud practiced by the plaintiff on the defendants. *Held*, that the plea was insufficient. *WORNELL vs. WILLIAMS*, 19 *Texas Reports*, 180.

724. The mere possession by a plaintiff of a promissory note, payable to a third person, or order, without endorsement by him, is not such evidence of ownership as will sustain a declaration on the note, averring a transfer to the plaintiff by delivery. *ROSS vs. SMITH*, 19 *Texas Reports*, 171.

725. The consideration of a note, to which a seal is attached, cannot be impeached otherwise than by a sworn plea. *MUCKELROY vs. BETHANY*, 23 *Texas Reports*, 163.

726. In an action on a promissory note signed by a firm, a plea of one of the alleged members of the firm denying the fact of his partnership, is not good as a plea of *non est factum*, as it does not deny the execution of the note. *FERGUSON vs. WOOD*, 23 *Texas Reports*, 177.

727. An amended answer to an action on promissory notes, given for the purchase of land, alleging that the defendants were induced to give the notes by the false and fraudulent representations of the payee, that he had good title to the land, the defendants having no other means of information, was held legally sufficient. *COPLAND vs. GORMAN*, 19 *Texas Reports*, 253.

728. *Held* to be no objection to the plea that the alleged failure of title did not go to the whole, but only a part of the land conveyed. It was the right of the defendant to take what the vendor could convey, and have an abatement of the price to the extent of the failure of title. *Ibid*.

729. A verbal agreement, made immediately after a note, that a sum should be credited on the note, is a good defence to the note. *NALLE vs. GATES*, 20 *Texas Reports*, 315.

730. Where a vendee has, by arrangement, given his note to a third person, to whom his vendor was indebted, as part payment of the consideration of an executory contract for the sale of land to which the vendor cannot make good title, *it seems* that this will be a good defence to the vendee in an action on the note, where the payee takes it with full knowledge of the circumstances. *HURT vs. McREYNOLDS*, 20 *Texas Reports*, 595.

731. It is not necessary for a plaintiff to file his own affidavit of the loss of a note on which suit is founded, if he can prove such loss by a third person. *WITHEE vs. FEARING*, 23 *Texas Reports*, 503.

732. If, from the face of the note, and upon the allegations of the petition, it is apparent that the defendants intended to bind themselves, and the plaintiff intended to hold them, as trustees merely, a personal judgment against them is bad. *STOREY vs. NICHOLS*, 22 *Texas Reports*, 87.

733. A judgment for the payment of a note not bearing interest, decreeing interest "from this date," contemplates interest only from the date of the judgment, and is not in conflict with the terms of the note. *BUSH vs. WILSON*, 23 *Texas Reports*, 148.

734. Suit on a promissory note for money, containing a provision that it might be discharged in groceries. *Held*, that no demand of groceries need be proved by the plaintiff, and that the plea by the defendant that he was ready at the time and place to discharge the note in groceries was bad, in absence of proof that he had notified the plaintiff of his election so to pay it before the note matured. *DUMAS vs. HARDWICK*, 19 *Texas Reports*, 238.

735. A note was made payable partly in lumber, "if delivered according to contract," to be sawed at the promisor's mill within a time fixed. The promisor's mill was not in operation until after the time fixed. *Held*, that no demand of lumber was necessary before an action for the money. *BLOUNT vs. RALSTON*, 20 *Texas Reports*, 132.

736. The liability of an endorser of a promissory note is fixed and secured by the act of bringing suit against the payee within sixty days, as prescribed by statute. *PERRY vs. SHROPSHIRE*, 23 *Texas Reports*, 153.

737. The endorser occupies the position of primary obligor, in default of payee, and if unsatisfied with the diligence of the holder in prosecution of judgment, he can discharge the liability, and become equitable owner of the claim. *Ibid.*

738. In a suit against the maker and endorsers, judgment went against all, and also against one endorser in favor of the maker, on an obligation of indemnity; on motion of the maker, a new trial was granted as to him, and the suit discontinued. *Held*, that upon failure of the judgment against the maker there was nothing to support the other judgment, it not appearing that the maker resided out of the State, or in a county not organized, nor that he was insolvent. *RUTHERFORD vs. HARRIS*, 22 *Texas Reports*, 166.

739. The assignees of a negotiable note, given originally for land, are not compelled to enforce the vendor's lien, in order to secure the liability of the assignor, who is the payee of the note. *NESMITH vs. McLEMORE*, 23 *Texas Reports*, 442.

740. A. and B. dealing faro in partnership, and becoming indebted for losses to C. and D., A., in consideration that B. paid C. the amount due him, undertook to pay D., which assumption D. accepted in discharge of A., and gave B. his promissory note for his share of the losses. *Held*, that the consideration of the note was not unlawful, and that B. could sue and recover upon it, without having paid D. *BOGGERSS vs. LILLY*, 18 *Texas Reports*, 200.

741. Where a petition described the instrument sued on as a promissory note, but alleged that it was signed "R. AUBREY, [seal,]" it was *held*, that this was a sufficient averment that the note was under seal. *CONNOR vs. AUBREY*, 18 *Texas Reports*, 427.

742. In a suit on a promissory note, if the copy of the note in the petition has the figures \$355 at the commencement, and the words three hundred and fifty-six dollars in the copy of the body of the note, and the note produced at the trial corresponds in all respects with that set out in the petition, except a clumsy alteration of the word "six" to five, in the body of the note, this is a variance, and objection being then made and overruled, judgment will be reversed. *BROWN vs. MARTIN*, 19 *Texas Reports*, 343.

743. An averment that the plaintiff is the owner and holder of a note made and executed by the defendant, sufficiently imports a delivery. *BLOUNT vs. RALSTON*, 20 *Texas Reports*, 13.

744. A petition on a note beginning "A. W. & Co., a mercantile firm of the State and city of New-York," does not properly aver that the office of the firm was in New-York, nor that the note was executed there, especially where the fact should have been distinctly averred in another part of the petition, and is not there so averred. *WHITLOCK vs. CASTRO*, 22 *Texas Reports*, 108.

745. Surviving joint and several makers, though sureties, can be sued without joining the administrator or heirs of deceased makers. *WALKER vs. COLLINS*, 22 *Texas Reports*, 129.

746. The petition alleged that the defendant executed and delivered a note, a copy of which was set out, the payee's name being the same as the plaintiff's. *Held*, that the petition was bad, as it did not aver that the plaintiff was payee or holder. *MALONE vs. CRAIG*, 22 *Texas Reports*, 609.

747. On a general demurrer to a petition, alleging that, "for value received," defendants "jointly and severally promised to pay, twelve months after Feb. 5th, 1856, to your petitioner or his order, said sum of, &c., with interest, after date, at the rate of," &c., it was *held*, that the note sued on was well set out. *WALLACE vs. HUNT*, 22 *Texas Reports*, 647.

748. A note should be set out *in hæc verba*, or by its legal tenor, averring that the defendant thereby promised, &c.; a conversational description of it is bad on special demurrer. *BLEDSON vs. WILLS*, 22 *Texas Reports*, 650.

749. The holder of negotiable paper, endorsed in blank, or made payable to bearer, is presumed to be the owner for consideration. If circumstances cast suspicion on his title, as if it came to him from or through one who had stolen it, then he must prove that he gave value for it. *WHITTED vs. McADAMS*, 18 *Texas Reports*, 551.

750. It is not necessary, in order to put the plaintiff upon proof of his title, or to account for his possession, that there should be proof positive of facts sufficient to negative and disprove his title. It is sufficient if the evidence casts a doubt and suspicion upon it. *Ibid*.

751. There being evidence to show that the note in question had belonged to the estate of a deceased person, upon which there had been no administration, the plaintiff was held to show how he obtained the note. *Ibid*.

752. Action upon a promissory note. Plea, that the note in suit was given to C., the payee, (by whom it was assigned to the plaintiff,) on the dissolution of a copartnership between said C. and one P., in consideration that C. covenanted to hold P. harmless from liability or obligation to pay any of the debts or demands against said firm of C. and P., and that the plaintiff had notice of the consideration when he took the note. That the consideration of the said note had failed, inasmuch as P. had been sued, and judgments recovered against him for debts due from said firm. *Held*, that this was a good plea to the action. *POPE vs. HAYS*, 19 *Texas Reports*, 375.

753. A holder of a joint promissory note should prosecute a suit on such note against the surviving makers in the District Court, without making the executor of one of the makers, since deceased, a party to the suit. *WILEY vs. PINSON*, 23 *Texas Reports*, 486.

754. Whether a note sued on, with a scrawl and the word seal after the maker's signature, is "a note in writing under the seal of the party charged therewith," is no longer an open question, and the plea impeaching the consideration must be supported by affidavit. *CONNER vs. AUBREY* 18 *Texas Reports* 487.

755. A general denial, though not sworn to, is an answer to a suit on a note, and will prevent judgment by *nil dicit*. *KINNARD vs. HERLOCK*, 20 *Texas Reports*, 48. *ROBINSON vs. BRINSON*, *Ibid*, 438. *HURT vs. BLACKBURN*, *Ibid*, 601.

756. The plea, if not sworn, does not put in issue the execution of the note. *Ibid*.

757. The words, "we waive suit being brought on this note at the first term of court," signed by two endorsers, may apply to a waiver for that term only, or to a waiver of the statutory diligence necessary to hold endorsers; and the facts that the agreement was made five months before the note was due, and that one of the endorsers, to whom collusion was not imputed, suffered judgment to go by default, was held sufficient to show that the latter was the true construction. *RUNNELS vs. SWAN*, 20 *Texas Reports*, 822.

758. And, therefore, where a plea in abatement and affidavit therewith, instead of alleging in terms that the defendant was released from liability, referred to the petition in which such a statement was made, and was based on the assumption that it had alleged such release, it was held that the plea was not insufficient. *Ibid*.

759. The case of a lost note is not within the provision of the statute (*Hartley's Digest*, article 741) dispensing with proof of its execution and of the assignments, unless denied by oath. *ERSKINE vs. WILSON*, 20 *Texas Reports*, 77.

760. Letters acknowledging the justness of the plaintiff's claim, and his right to receive payment, addressed to one holding a note as assignee of the heir of the payer, were held insufficient proof of the assignment of the note. *Ibid*.

761. In a suit on a promissory note, where the defence is that the note was obtained by fraud, and that plaintiff had notice of it, if the defendant prove the first allegation, *it seems* that the burden is then on the plaintiff to show that the note came to his hands in the ordinary course of business, before due, and for value. *HILLEBRANT vs. ASHWORTH*, 18 *Texas Reports*, 307.

762. The statute (*Hartley's Digest*, article 2,521) affirming the general principle that, if it be shown that the plaintiff did not give value for the note, it is open to proof of failure of consideration and other defences, does not throw the burden of proof upon him. *McALPIN vs. FINCH*, 18 *Texas Reports*, 831.

763. The assignee of a note from an heir at law, in order to recover, must prove death of the payee and heirship, in the same manner as would have been required from the heir. *ERSKINE vs. WILSON*, 20 *Texas Reports*, 77.

764. A holder in Texas endorsed a foreign sight bill a month old, drawn in Ohio on drawees in Louisiana; three weeks later it came to the hands of one who kept it a month, and then presented it for acceptance. Held, in view of the usage, (which the jury found to have been reasonably followed,) that the presentation was in reasonable time so as to charge the endorser. *JORDAN vs. WHEELER*, 20 *Texas Reports*, 698.

765. Where, by the law-merchant, the drawer was not entitled to notice of the dishonor of a bill, the statutory diligence need not be observed. *WOOD vs. McMEANS*, 28 *Texas Reports*, 481.

766. A drawer is not, therefore, under the statute, (*Hartley's Digest*, article 2,528,) entitled to notice, where he has funds in the hands of the drawee, or reasonable ground to suppose that the bill will be accepted. *Ibid.*

767. In such case it is not necessary to sue him to fix his liability. *Ibid.*

768. An order from the trustees of an institution to its treasurer to pay to the plaintiff in a suit a certain sum "out of any funds not otherwise appropriated, as soon as collected," does not limit the liability of the institution to pay such debt only when funds, not otherwise appropriated, might be collected by the treasurer. *BUSH vs. WILSON*, 23 *Texas Reports*, 148.

769. An accommodation acceptor, as between himself and the drawer, is entitled to be regarded in the light of a surety; and upon payment of the bill, is entitled not only to have the full benefit of all additional securities which the creditor has taken, but to have the bill itself transferred to him. *SUTELL vs. McKINNEY*, 19 *Texas Reports*, 488.

770. He has the right to be subrogated to all the rights of the creditor, whose demand he has paid; and as the creditor, before payment, could sue upon the contract, such surety may likewise maintain an action upon it. *Ibid.*

771. An acceptance of an order or a bill of exchange may be by parol. *LEMMON vs. BOZ*, 20 *Texas Reports*, 329.

772. Where, in a suit on a bill of exchange, it is averred and proved that the drawer had no funds in the hands of the drawee, the burden of proof is on him to show that he had reasonable grounds to suppose that his draft would be accepted. *WOOD vs. McMEANS*, 23 *Texas Reports*, 481.

773. Where the holders of a bill of exchange are excused from diligence to fix the liability of the maker, their right to call on him for payment will not be defeated short of the period prescribed by the statute of limitations. *Ibid.*

774. In an action on a promise to pay in horses, it is not competent to show, as a condition precedent, a parol and contemporaneous agreement, that the payee should go to the payer's house, and there demand and take the horses at a fair valuation. *TRAMMEL vs. PILGRIM*, 20 *Texas Reports*, 158.

XXV. VERMONT.

775. One who signs as surety may so stipulate, at the time of entering into the obligation, as not to be liable to contribution with other sureties who have signed before him. And when one guarantees the payment of a note on which sureties have already signed, it seems, that *prima facie*

his legal relation to those who have signed before him is such that he is surety for them jointly, not jointly with them. *KEITH vs. GOODWIN*, 2 *Shaw's (Vermont) Reports*, 268.

776. The defendant signed a joint and several promissory note with others, upon which, though he appeared as one of the principals, he was, in fact, a surety. Afterwards, at the request of one of the principals, and for the purpose of assisting them in raising money upon the note of the plaintiff, not knowing that the defendant was a surety, guaranteed the payment of the note, and eventually was obliged to pay it. *Held*, that in the absence of proof that he signed the guarantee as a general surety, and with the intention of being liable to contribution with the other sureties, the plaintiff was entitled to recover of the defendant the whole amount paid by him. *Ibid*.

777. If one sign a note as surety, and intrust it to his principal, he thereby gives the latter implied authority to obtain either additional sureties or guarantors, indefinitely, until the note is fairly launched in the market as a security, having two distinct parties. *Ibid*.

778. If an endorser of a note, with a full knowledge of the existence of facts which in law would discharge him from liability thereon, promise to pay the note, he will be bound thereby. *BLODGETT vs. DURJON*, 3 *Shaw's (Vermont) Reports*, 361.

779. The facts that three months had elapsed between the maturity of the note, and such a promise by the endorser, that the latter had an agent at his residence who attended to his correspondence, and that he had himself received no notice of non-payment, were held sufficient evidence to authorize the court to submit to the jury to find thereon whether or not the endorser, at the time of making such promise, was aware that the holder had not taken the proper legal steps to charge him as endorser. *Ibid*.

780. A note given by one in failing circumstances, made payable on demand, and executed solely for the purpose of being immediately put in suit, in order to secure the maker's existing obligations to the payee, which have not yet matured, is valid, even against subsequent attaching creditors of the property attached in the suit on such note, and whose claims had matured at the time of its execution. *SHEED & Co. vs. BANK OF BRATTLEBORO*, 3 *Shaw's (Vermont) Reports*, 709.

781. The defendant, residing at Burlington, was a member of a firm of wharfingers, the other members of which resided and did the firm business at Port Kent, N. Y., the defendant having no active participation in the management of the business. One of the firm, without the defendant's knowledge, executed, in the partnership name, three notes, one for five hundred dollars, and two for one thousand dollars each, without consideration, all dated in the same month, and payable to C., or order, who, before their maturity, negotiated them for a valuable consideration, to the plaintiffs, to whom he was largely indebted, and who knew that he was insolvent, and that the defendant did not reside at the place of the business of the firm where the notes were dated. The plaintiffs had

no knowledge of any custom or necessity of the defendant's firm to execute notes, and took the notes in question, relying on the responsibility of the defendant, and supposing them to be business notes; but they made no inquiry as to his knowledge of their execution, or whether they were, in fact, business or accommodation paper. The plaintiffs having sued the defendant on the notes, the case was referred, and the referee, after reporting the foregoing facts, stated that he was of opinion from said facts that the plaintiffs ought, in good faith towards the defendant, to have inquired, before they took the notes from C., whether the defendant had authorized the making of them, and that they were wanting in due diligence in not inquiring of the defendant or C., whether they were accommodation notes or not. *Held*, that this statement of this opinion of the referee was to be considered as the decision by him of questions of fact, and, as such, was conclusive; that the facts recited by him had a legal tendency to support such a decision, and that the plaintiffs were not entitled to recover. *ROTH & Co. vs. COLVIN, ALLEN & Co.*, 3 *Shaw's (Vermont) Reports*, 124.

782. The purchaser of negotiable paper must exercise reasonable prudence and caution in taking it; and, if the circumstances are such as would excite the suspicion of a prudent and careful man, in regard to the binding force of the paper, as between the original parties, and the purchaser take it without making inquiry, he will not stand in the position of a *bona fide* holder, and cannot recover upon it, though he may have paid value for it. *Ibid*.

783. The law of the place of payment of a promissory note determines whether days of grace are allowed upon it or not. Where no particular place of payment is fixed by the note itself, the place of execution is the place of payment, without regard to the residence of the parties or the place at which the note is dated. *BLODGETT vs. DURGIN*, 3 *Shaw's (Vermont) Reports*, 361.

784. But, *quere*, whether if the holder of a note payable generally, is not aware that it was executed at a different place from that at which it is dated, he will not be protected if he charges the endorser by presentment and notice according to the law of the latter place, even though he may not have done so according to the law of the place where the note was in fact executed. *Ibid*.

785. If the holder of the note does not know the residence of an endorser, and cannot ascertain it by diligent inquiry, it is sufficient to charge him, if the holder give him notice of its presentment and non-payment at the first opportunity. *Ibid*.

786. Where a declaration upon a promissory note, payable in three months from date, described it as payable in three from date, but proceeded to aver that "the said three months from the date of the said note have long since elapsed," it was *held*, that the omission of the word "months," in the first part of the declaration, did not create a fatal variance. *PASSUMPSIC BANK vs. GOSS*, 2 *Shaw's (Vermont) Reports*, 315.

787. One who, at the time suit is brought, is neither the owner nor holder of a negotiable promissory note, and has no interest in it, may still maintain an action thereon in his own name, for the benefit of the real owner, and with his consent, provided he produce the note on trial. *AUSTIN vs. BIRCHARD*, 2 *Shaw's (Vermont) Reports*, 589.

788. A provision in the charter of a bank that no note, originally due and payable to it, should be endorsed so as to enable the endorsee to maintain an action upon it in his own name, does not apply to a note taken to an individual for the benefit of a bank, and by him endorsed and delivered to the bank, and then sued for their benefit in his name. *Ibid.*

789. The questions whether the holder of current negotiable paper has taken it with or without notices of defences between prior parties, whether he has exercised good faith in the transaction, or has been guilty of negligence, or a want of proper care, are always questions of fact, to be determined by a jury. *ROTH & Co. vs. COLVIN, ALLEN & Co.*, 3 *Shaw's (Vermont) Reports*, 125.

790. In an action upon a promissory note, brought for the benefit of the payee, but in the name of a mere nominal plaintiff, the maker introduced in evidence a written contract between him and the payee in regard to a note, of which the one in suit was only a renewal, which contract was made at the time of the execution of the original note, by which it was agreed that the maker should not be obliged to pay the note, and sufficient was conceded in the case to show that the note in suit stood upon the same footing in regard to the maker's liability upon it, as the original note. *Held*, that the plaintiff could not introduce parol evidence to show that the agreement between the parties, at the time of the execution of the original note, was such that it was the duty of the maker to pay it. *NORTON vs. DOWNER*, 2 *Shaw's (Vermont) Reports*, 407.

791. If the several members of a partnership have power to bind the firm by the execution of promissory notes in the firm name, in matters pertaining to the partnership business, the firm will be liable to the *bona fide* purchaser of a note in their name, though executed by one partner, even though it be without consideration not inuring to the partnership use. *ROTH & Co. vs. COLVIN, ALLEN & Co.*, 3 *Shaw's (Vermont) Reports*, 125.

792. A promissory note, executed for the purpose of raising money, and made payable to a particular person or corporation, with the expectation that it will be discounted by the payee, may be taken and discounted by another, without the consent of the surety, and the person thus advancing the consideration may hold the note as a valid security for the money, even against the surety, and may enforce payment by suit in the name of the payee, unless he refuses to allow his name to be used for that purpose. *BANK OF MIDDLEBURY vs. BINGHAM et al.*, 4 *Shaw's (Vermont) Reports*, 621.

793. The party thus advancing the consideration for the note becomes the real holder, and a delivery to him is a valid delivery of the note. *Ibid.*

794. To entitle the maker of a promissory note, in a suit against him by the payee, to an abatement from its amount in assessing damages, on the ground of misrepresentation by the payee in relation to the property

for which the note was given, and a consequent want of consideration as to part of the note, three things must concur, viz. : fraud upon him in procuring the note for the sum named in it; an offer by him to rescind the contract under which the note was given, and an ability, by *computation*, to fix the amount to be deducted. *HARRINGTON vs. LEE, 4 Shaw's (Vermont) Reports, 249.*

795. J. being indebted to P., gave him a note, signed by himself and sureties, payable to a bank, with the agreement with P. that the latter should procure it discounted, and apply the proceeds on his debt, and that if it could not be discounted it should be returned, but this agreement was unknown to the sureties. P. being unable to procure the note discounted, left it with the bank, as collateral security for a debt he owed them, and so informed J., who made no objection thereto. After its maturity, the note was, by agreement between J. and P., and without the sureties' knowledge, applied on the former's indebtedness to the latter, and P. took the note from the bank, which had previously commenced suit on it, in their own name, against all the makers, and thereafter the suit was prosecuted solely for the benefit of P. *Held*, that the action could be maintained. *BANK OF MONTPELIER vs. JOYNER, 4 Shaw's (Vermont) Reports, 481.*

796. When the *bona fide* purchaser of a negotiable note gives his own note for the price of the purchase, he is to be regarded as a holder for value, in the commercial sense. *ADAMS vs. SOULE et al., 4 Shaw's (Vermont) Reports, 538.*

797. If the maker of a note insists upon holding the property for the purchase of which the note was given, this operates as an affirmation of the contract of purchase in all its particulars, and disentitles him to question either the validity or the amount of the note. *HARRINGTON vs. LEE, 4 Shaw's (Vermont) Reports, 249.*

798. Partial failure of the consideration of a promissory note, the amount of such failure being unliquidated, and subject to the estimation of the jury, cannot be shown for the purpose of reducing the amount of the recovery in an action upon the note. *RICHARDSON vs. SANBORN, 4 Shaw's (Vermont) Reports, 75.*

799. In protesting a promissory note for non-payment, which, by its terms, was payable "at any bank in Boston," *held*, that a demand of payment upon the teller at any bank in that city, selected by the endorsee and holder of the note, and without any previous notice that payment would be demanded there, was sufficient to charge the endorser. *BRICKETT et al. vs. SPAULDING, 4 Shaw's (Vermont) Reports, 107.*

800. If the maker of the note desired to render the terms "any bank" more definite, he should either have called upon the holder to make his election at what bank he would receive payment, or else have made his own election, and given notice thereof to the holder. *REDFIELD, C. J. Ibid.*

801. If a note be signed by principal and surety, by its terms payable to a particular bank, for the purpose of raising money upon it, it is no defence for either of the makers that it is not discounted by the bank, but by another party. *BANK OF MONTPELIER vs. JOYNER, 4 Shaw's (Vermont) Reports, 481.*

802. The defendant executed a promissory note to the plaintiff, but at the same time it was agreed, by a separate instrument in writing between them, that the defendant was not to be liable to pay the note to the plaintiff, but was, in fact, merely a surety for him. *Held*, that it was competent for the plaintiff to show, that subsequently, for a good consideration, the parties agreed by parol to sustain the same relation to each other in connection with the note, as was imported by its terms; and that such a subsequent agreement having been proved, the plaintiff was entitled to recover of the defendant upon the note. *NORTON vs. DOWNER*, 4 *Shaw's (Vermont) Reports*, 26.

803. The plaintiff having testified that such an agreement was made in the presence of H., and that H. at the time made a written statement of the mode of settlement of the parties' accounts, upon the basis of which such agreement was made. *Held*, that it was competent for the plaintiff to introduce in evidence, as corroborative of his own testimony, such written statement. *Ibid*.

804. When the payee of a promissory note has once transferred it, but, by the failure of the maker to pay it, has been compelled to take it up, it is still a valid and negotiable note in his hands as against the maker. *Ibid*.

805. The pendency of a suit in a court of record in this State, at the time of the transfer of a promissory note, in which the payee of the note is a party, and which suit affects the title to the real estate for which the note was originally given, is not constructive notice to the party to whom the note is so transferred, of any defect or failure in its consideration, although he knew at the time he received the note that it was originally given for such real estate. *SAWYER vs. PHALEY*, 4 *Shaw's (Vermont) Reports*, 69.

806. The payment of interest in advance upon a debt, or the purchase by the debtor of the creditor, at the latter's request, of property, and the execution by the former to the latter of his note and mortgage, therefore are, either of them, a sufficient consideration to support a promise to delay the collection of the original debt, which, when made by the creditor to the principal, will discharge the surety. *DUNHAM vs. DOWNER*, 2 *Shaw's (Vermont) Reports*, 249.

807. A. and B. signed a note with C., as his sureties to M. M. recovered judgment upon the note, and assigned the judgment to D., who, knowing that A. and B. were merely sureties for C., agreed by parol with C., for a good consideration, to extend the time of payment of the judgment, and did extend it accordingly; and afterwards sued A., B. and C. upon the judgment. A. and B. defended upon the ground of the extension of time to the principal, but the court overruled the defence. They then brought a bill in Chancery to restrain the judgment, and the court held that they were discharged in equity, though not at law, and that the adjudication in the court of law was not conclusive, and granted a perpetual injunction according to the prayer of their bill. *Ibid*.

808. If the holder of a negotiable promissory note write and sign upon the back of it a guarantee that it shall be collectable when due, such en-

dorsement, though sufficient to transfer the legal title to the note, does not create the same liability upon him as an unconditional endorsement, but merely makes him liable as a guarantor that the note is collectable. *BENTON vs. FLETCHER*, 2 *Shaw's (Vermont) Reports*, 418.

809. No binding agreement to delay the collection of any verdue debt is implied from the receipt by the creditor, from the principal debtor, of a note or other obligation not yet due, merely as collateral security therefor; and, therefore, the mere receipt of such collateral security will not have the effect to discharge a surety or endorser upon the original debt. *REDFIELD, C. J.*, dissenting. *AUSTIN vs. CURTIS*, 2 *Shaw's (Vermont) Reports*, 64.

810. But, *aliter*, it seems, if the creditor accept such obligation for and on account of the original debt. Per *BENNETT, J.* *Ibid.*

811. By taking such an obligation as collateral security merely, the creditor doubtless furnishes ground for an expected indulgence on the original debt, but the debtor is bound to treat this as at all times counter-mandable at the will of the creditor. Per *BENNETT, J.* *Ibid.*

812. In cases of a debt on specialty or of record, where the undertaking of the surety is on the face of the contract direct, and not merely collateral, neither a parol agreement between the creditor and principal for an extension of time, nor an actual extension in fulfilment of such an agreement, will have the effect at law to discharge the surety; but *aliter*, in equity. 2 *Shaw's (Vermont) Reports*, 249.

813. In equity, a judgment at law against a principal and surety does not affect the rights of the surety, but they remain the same as before, both as against the principal and the creditor. *Ibid.*

814. M. sold a farm to T., and received therefor the latter's note, payable to "M., or bearer, on demand, after a lease shall be given up from M. to O., dated July 28th, 1851." This lease was an incumbrance upon the farm, which was to be given up within a short time, and it was, in fact, surrendered within a few days after the sale. M. owed the plaintiff, who was present at the execution of the note, and it was understood by all the parties that the note was to go to him, and M. delivered it to him on the same day. *Held*, in the absence of any proof as to the length of time the lease was to run, that the note was payable on a contingency, and was therefore not negotiable, and that an action could not be maintained upon it against T. in the name of the plaintiff. *DOWNER vs. TUCKER*, 2 *Shaw's (Vermont) Reports*, 204.

815. If a note, for the purpose of raising money, be made payable to a bank, and be discounted by the cashier of that bank on his private account, and afterwards be transferred before maturity by him, with his endorsement in the name of the bank as cashier thereon, this constitutes a sufficient recognition of the note by the bank, to render it binding upon all the parties to it, whether principals or sureties. *KEITH vs. GOODWIN*, 2 *Shaw's (Vermont) Reports*, 268.

816. It seems, that where a bill or note is taken as a security, the antecedent debt is a sufficient consideration. *AUSTIN vs. CURTIS*, 2 *Shaw's (Vermont) Reports*, 64.

817. And where the claim was presented and allowed by the commissioners against the estate of a prior endorser, who had died solvent, before the maturity of the note, and pending an appeal from the refusal of the probate court, after the expiration of three years, to order the executor of the deceased endorser to pay the amount of the note, the plaintiff sued the defendant upon his guarantee, it was *held*, that the action was prematurely brought. 2 *Shaw's (Vermont) Reports*, 418.

818. *Quere*, whether if the plaintiff had procured a decree from the probate court, ordering the payment of the debts, which had not been obeyed, he could have sued upon the defendant's guarantee until after he had exhausted the remedy of a suit upon the executor's bond. *Ibid*.

819. If a bill or note be assigned and delivered, before maturity, as collateral security for a debt which is created at the time of the assignment, the assignee is a holder for value. *GRISWOLD vs. DAVIS*, 2 *Shaw's (Vermont) Reports*, 390.

820. Where a note or bill is assigned underdue, as a collateral security for a debt created at the time of the assignment, it is not necessary for the assignee to give notice of the transfer to the maker, except for the purpose of preventing the attachment of the note by the trustee process, at the suit of the creditors of the payee; and if the maker, without notice of such assignment, and in good faith, pay the amount of the note to the payee, when it is not in the latter's hands, he will still be liable to pay it to the assignee. *Ibid*.

821. If the maker of a negotiable promissory note does not find it in the hands of the payee when it falls due, he should presume, as the law presumes, that it has been transferred, and pay it when and where he finds it. *Per POLAND, J. Ibid*.

822. A promissory note, payable to plaintiff or bearer, and not specifying any time of payment, taken by A. for the price of intoxicating liquor, sold contrary to compiled statutes, chapter 87, and delivered to plaintiff for valuable consideration, without notice of the illegality, was *held* valid in the plaintiff's hands. *PINDAR vs. BARLOW*, 2 *Shaw's (Vermont) Reports*, 529.

823. *Quere*, whether the rule would not be otherwise in regard to a note given for liquor sold contrary to the provisions of the act of 1852, in regard to the traffic in intoxicating drinks. *Per REDFIELD, C. J. Ibid*.

824. P. signed a joint and several promissory note, with G. as his surety, payable to a bank, but with the agreement between him and G. that the latter was not to use the note unless he obtained another surety upon it. In violation of this agreement, G. procured the note to be discounted at the bank. *Held*, that this constituted no defence for P. upon the note, unless the officers or directors of the bank were aware of such agreement. *PASSUMPSIC BANK vs. GOSS*, 2 *Shaw's (Vermont) Reports*, 315. *DIXON vs. DIXON, Ibid*, 450.

825. When one receives a note, with a guarantee that it shall be collectable when due, he is bound, before he can maintain an action against

the guarantor, to pursue with reasonable diligence all legal means of collecting the note out of all the prior parties to it, whether makers or endorsers, unless they are entirely insolvent. *BENTON vs. FLETCHER*, 2 *Shaw's (Vermont) Reports*, 418.

826. And, if any such prior party die before the maturity of the note, it is the duty of the holder to exhaust all legal means afforded by the probate court, and by the county court on appeal, for collecting the note out of such deceased party's estate, before he can proceed against the guarantor. *Ibid.*

827. It is well settled that a note, received in payment of a pre-existing debt, is received and held upon valuable and valid consideration. *DIXON vs. DIXON*, 2 *Shaw's (Vermont) Reports*, 450.

828. Negotiable paper, not payable upon its face, or by direct endorsement to a bank, is subject to the provisions of the compiled statutes, chapter 84, section 82, only while it is held by the bank. *BRUCE vs. HAWLEY*, 2 *Shaw's (Vermont) Reports*, 643.

829. The fact that one is a director of an insolvent bank, does not render it illegal for him to receive, in good faith, from the bank a transfer of negotiable paper against third persons, held by the bank, in payment of a debt due and payable from the bank to him; and if he so receive negotiable paper, before maturity, not payable on its face to the bank, he may collect it of those liable upon it, in his own name, and they have no right to pay it in the bills of the bank. *Ibid.*

830. Even if the receipt of such paper, under such circumstances, be a breach of his duty to the bank, that constitutes no ground of defence for the person liable upon the paper, so long as the stockholders of the bank do not complain of it. *Ibid.*

831. Where B., being indebted to A., refused to accept an order drawn by A. upon him, in favor of C., and was afterwards sued by A. upon the claim against which the order was drawn, it was held, that the bringing of the suit was a revocation of the order, and that C., having notice of it, the assignment of the claim could not then be treated as in force, to the prejudice of A.'s action. *SEARGENT vs. SEWARD*, 2 *Shaw's (Vermont) Reports*, 509.

XXVI. VIRGINIA.

832. The following is not a bill of exchange, nor does it, of itself, import a promise by the drawer to the payee, upon good consideration, like a bill of exchange: "The trustees of N. and A. will pay to B. ten dollars, with interest from March 15, out of any moneys in his hands belonging to M. (Signed,) A." *AVERETT vs. BOOKER*, 15 *Grattan's Reports*, 163.

833. When a negotiable note was to be protested the endorser was dead, intestate, and no administrator had been appointed. The notice was sent through the mail, addressed to the "legal representatives of" the endorser, "Lynchburg," which was the name of the place where the endorser had lived, his family still remaining in the same house. The notice was held good. *BOYD vs. CITY SAVINGS BANK*, 15 *Grattan's Reports*, 501.

XXVII. WISCONSIN.

834. The garnishment of the maker is no defence to an action on a note, unless the presumption that it was endorsed before it was due be rebutted. *MASON vs. NOONAN et al.*, 7 *Wisconsin Reports*, 609.

835. As between the maker of a note and the payee, or one who holds subject to the equities, contemporaneous writings, relating to the same subject matter as the note, are admissible to vary or control it. *ELMORE vs. HOFFMAN*, 6 *Wisconsin Reports*, 68.

836. A collateral writing, whereby the payee agreed to let the note run until the happening of a certain contingency, is admissible to defeat a premature action, as it is part of the original contract. *Ibid.*

837. A note specially declared upon according to its legal effect, is admissible under the common counts. *DART vs. SHEERWOOD*, 7 *Wisconsin Reports*, 523.

838. Failure of the consideration of the note or fraud cannot be proved under our code, unless that defence be set up in the pleadings. *GREGORY vs. HART*, 7 *Wisconsin Reports*, 532.

839. In a suit by an endorsee against the maker, the production of the note is *prima facie* proof that the endorsement was made near the time of making the note, and before maturity. *MASON vs. NOONAN*, 7 *Wisconsin Reports*, 609.

840. An endorser may waive demand and notice either before or after maturity. *POWER vs. MITCHELL*, 7 *Wisconsin Reports*, 161.

841. In this case the agreement was, that demand and notice were not to be required until a day certain. *Held*, that the plaintiff must show a good demand, and notice as of that day. *Ibid.*

842. And held, also, that such agreement estopped the endorser from objecting that they were not made at the maturity of the note. *Ibid.*

843. A verbal agreement, at the time of the transfer of a note by endorsement, dispensing with demand and notice, makes part of the contract of transfer, and binds the endorser. *Ibid.*

844. A notary's certificate, made in Pennsylvania, of the protest of a note payable in that State, is competent evidence of that fact in our courts. *CARRUTH vs. WALKER*, 8 *Wisconsin Reports*, 252.

845. The plaintiff must show the notice to be proper as well as properly served. *SMITH vs. HILL*, 6 *Wisconsin Reports*, 154.

846. Notice of demand sent to the endorser through the post-office, instead of being personally served, is insufficient, when the notary resides within two miles of the endorser's residence. *POWER vs. MITCHELL*, 7 *Wisconsin Reports*, 161.

847. A note contingent in any of its terms, or made subject to the equities between the parties, growing out of a contemporaneous agree-

ment, is not a promissory note within the statute. *DILLEY vs. VAN WIE*, 6 *Wisconsin Reports*, 209.

848. Though a note be made in the singular number, one who signs after the maker, adding the word "surety" after his name, is thereby bound as a joint and several principal maker. *DART vs. SHERWOOD*, 7 *Wisconsin Reports*, 523.

849. A note payable to A. B., "payable and negotiable without defalcation at the Bank of Pennsylvania," is not negotiable. *CARRUTH vs. WALKER*, 8 *Wisconsin Reports*, 252.

850. But an endorsement to the order of C. D., made by the payee, makes it negotiable, as between him and the subsequent holder. *Ibid.*

851. Statute, chapter 98, section 92, declares that possession of a note by the endorsee is *prima facie* evidence that it has been regularly endorsed as it purports to be; and under this, as well as at common law, an endorsee in possession is *prima facie* the owner, though the note bears his blank endorsement. *HUNGERFORD vs. PERKINS*, 8 *Wisconsin Reports*, 267.

852. A note was payable to A. and B.; the endorsement to the plaintiff was signed "A. and B.;" in the absence of all proof that A. and B. were partners, it was presumed that they endorsed as individuals. *Ibid.*

853. If the holder of the bill send it within a proper time for acceptance, he is not responsible for a delay in the mail. *WALSH vs. BLATCHLEY*, 6 *Wisconsin Reports*, 422.

854. The endorser of one of a set of bills acquires title to all, as against even a subsequent *bona fide* endorsee for value of another. *Ibid.*

855. Either of the set may be presented for acceptance, and if not accepted, the liability of the endorser is so far fixed as to all. *Ibid.*

856. Under an action on the first, the presentment of the second may be given in evidence. *Ibid.*

857. When the drawees are also holders of the bill, under the code, it is competent for the acceptors to show that, through mistake, they accepted the bill for a larger sum than was due the drawers, and thereupon recovery can be only for the amount really due. *THOMAS vs. THOMAS*, 7 *Wisconsin Reports*, 476.

XXVIII. DECISIONS OF THE SUPREME COURT OF THE UNITED STATES.

858. In an action to recover the consideration of a sale and conveyance of real and personal property, for which three notes were given—two of which were admitted to have been paid, and the third was produced and tendered to be given up—*Held*, 1st. That the other notes need not be produced; 2d. That as defendants gave their notes for the purchase money, the presumption was that the conveyances had been made, and the deeds need not be produced; 3. That there was no presumption that the notes were received in satisfaction of the purchase money. *LYMAN vs. BANK OF THE UNITED STATES*, 12 *Howard's Reports*, 225.

859. Parol evidence is admissible to show the circumstances and intent under which a note was endorsed by a stranger thereto. 22 *Howard's Reports*, 341.

860. The endorsement in this case was made before delivery to the payee, and the endorser were held liable as joint makers. *Ibid*.

861. In Minnesota, declarations must give a statement of the facts constituting the cause of action, in such ordinary and concise language that a person of common understanding can know what is meant. It is, therefore, proper, in a suit on a note endorsed by one not a party, to set out the circumstances under which the endorsement was made, and then allege that it was intended as a security—the suit being against such endorser. *REY vs. SIMPSON*, 22 *Howard's Reports*, 341.

862. Under such a declaration, the endorser may be proved to be joint makers, and recovered against as such. *Ibid*.

863. A time bill, not presented for acceptance, is not payable till the last day of grace. *BANK OF WASHINGTON vs. TRIPLETT*, 1 *Peters' Reports*, 25.

864. If the vendee of goods endorse to the vendor a negotiable note of a third person, as a conditional payment for the goods, and the vendor uses due diligence to obtain payment of the note from the maker, he may then sue the vendee on the original contract of sale. *CLARKE vs. YOUNG*, 1 *Cranch's Reports*, 181.

865. It is not necessary first to tender the note to the vendee. *Ibid*.

866. Nor is a judgment in favor of the endorser, in an action by the endorsee, a bar to an action on a contract of sale. *Ibid*.

867. If a negotiable note has been received as a conditional payment, and has been passed to and is owned by a third person, the creditor cannot sue on the original contract. *HARRIS vs. JOHNSTON*, 3 *Cranch's Reports*, 311.

868. If a negotiable note of one joint debtor be received in payment, the debt is extinguished. *SHEEHY vs. MANDEVILLE*, 6 *Cranch's Reports* 253.

869. The acceptance of a negotiable note for an antecedent debt does not extinguish it, unless it is agreed the note shall operate as payment. *PETER vs. BEVERLY*, 10 *Peters' Reports*, 532.

870. A note made payable to the cashier of a bank, and drawn in a particular form to be within its usages, was sent to an agent to procure a discount at the bank; the bank having refused the discount, the agent sold the note and applied the proceeds to his own use. *Held*, that the note on its face showed the particular purpose for which it was made, and put a taker on inquiry, and he could not recover, though in fact he had not knowledge of the fraud. *FOWLER vs. BRANTLY*, 14 *Peters' Reports*, 318.

871. A bill protested for non-acceptance is taken subject to all the infirmities belonging to it. *ANDREWS vs. POND*, 13 *Peters' Reports*, 65.

872. The *bona fide* endorsee of a negotiable note is not barred from recovering thereon, under the law of Mississippi, by the re-sale of the property which formed the consideration, by the vendee to the vendor, nor by the redemption of it under a conditional sale, for which the note was the consideration. *BRABSTON vs. GIBSON*, 9 *Howard's Reports*, 263.

873. In Alabama, the law-merchant governs negotiable notes payable at a bank, and therefore an endorsee for value, without notice, and before maturity, takes the paper discharged from any infirmity of want of consideration. *SMITH vs. STRADER*, 4 *Howard's Reports*, 404.

874. A note payable to bearer is payable to anybody, and is not affected by the disability of the nominal payee to sue. *BANK OF KENTUCKY vs. WISTAR*, 2 *Peters' Reports*, 318.

875. Under the statute of Maryland, if a bill of exchange be paid *supra protest*, for the honor of the payee, the first of three endorsers, who thereupon repays the amount of the bill, with interest and charges, to the person who took the bill for his honor, the payee thus becomes the holder of the bill, and may recover damages against the drawer. *BANK OF THE UNITED STATES vs. UNITED STATES*, 2 *Howard's Reports*, 711.

876. The mere possession of a promissory note by an endorsee, who has endorsed it to another, is not sufficient evidence of his right of action against his endorser, without a re-assignment or receipt from the last endorsee. *WELCH vs. LINDO*, 7 *Cranch's Reports*, 159.

877. If the endorser of a bill come to the possession thereof, he is presumed to be the lawful holder; and this presumption is not removed by the fact that a special endorsement by him to a third person appears on the bill. *DUGAN vs. UNITED STATES*, 3 *Wheaton's Reports*, 172.

878. The real payees of a negotiable note have the right to transfer it by endorsement; and if the name of another person, who never had any interest in the note, appears thereon as a payee, the fact may be shown, by evidence *aliunde*, that he was not a payee, and thus the title of the endorsee will be supported. *PEASE vs. DWIGHT*, 6 *Howard's Reports*, 190.

879. The *bona fide* holder of a bill of exchange, who has taken it before its maturity, in payment of a pre-existing debt, without notice of any equities existing between the drawer and acceptor, is not affected by those equities. *SWIFT vs. TYSON*, 16 *Peters' Reports*, 1.

880. A mere agreement by the holder with the drawer for delay, without a consideration, and not communicated to the endorser, does not discharge the endorser. *McLEMORE vs. POWELL*, 12 *Wheaton's Reports*, 554.

881. Though an endorser of a negotiable note may ordinarily be declared against in an action for money had and received, yet if the plaintiff's evidence shows that he was a mere accommodation endorser, this action will not lie; he can be charged only on a special count upon the note. *PAGE'S ADMINISTRATORS vs. BANK OF ALEXANDRIA*, 7 *Wheaton's Reports*, 35.

882. If the second of a set of exchange has been duly protested, the endorsee may recover thereon against the endorser without producing the first of the set at the trial. *DOWNES vs. CHURCH*, 13 *Peters' Reports*, 205.

883. An agreement between the first and second endorsers, for the accommodation of the maker, to share any loss equally, made at the time of endorsing the notes, may be proved by parol, has a valuable consideration in the mutual promises, and is binding. *PHILLIPS vs. PRESTON*, 5 *Howard's Reports*, 278.

884. If a foreign bill be endorsed in Virginia, and duly protested for non-payment, the endorser is liable to an action for fifteen per cent. damages; his contract being governed by the law of the place where it was made. *SLACUM vs. POMEROY*, 6 *Cranch's Reports*, 221.

885. Damages are allowed on bills as a compensation for not obtaining the money at the place stipulated, and not by way of a penalty. *BANK OF THE UNITED STATES vs. UNITED STATES*, 2 *Howard's Reports*, 711.

886. Under the statute of Virginia, giving to debts due on protested bills of exchange the rank of judgment debts, a joint endorser, who has paid more than his proportion of the debt, has a right to satisfaction out of the assets of his co-endorser, with the priority of a judgment creditor. *LIDDERDALE'S EXECUTORS vs. ROBINSON'S EXECUTOR*, 12 *Wheaton's Reports*, 594.

887. Under the law of Kentucky, the assignor of a promissory note assumes to pay it, if, by legal process and due diligence, the assignee is unable to recover the amount from the maker. *BANK OF THE UNITED STATES vs. TYLER*, 4 *Peters' Reports*, 366.

888. Rules of due diligence under this law stated. *Ibid.*

889. It was not incumbent on the assignee to take an execution returnable on a rule day; and when the greatest time intervening between the date of an execution and placing it in the hands of the marshal was thirty-one days, and from the return of one execution, or *venditioni exponas*, to the issuing of another, thirty days, this was due diligence. *Ibid.*

890. The law of Kentucky requires the assignee to pursue the jailer and his sureties, for an escape of the maker of a note, before resorting to the assignor. *Ibid.*

891. If the endorser of a promissory note has been charged, by due notice of the default of the maker, the holder may proceed against either party, at his pleasure, and does not discharge the endorser by not issuing, or by countermanding an execution against the maker. *LENOX vs. PROUT*, 3 *Wheaton's Reports*, 520.

892. If a person write his name on a blank piece of paper, with the intent to have it operate as an endorsement of a negotiable note, to obtain a loan for the benefit of a friend, who is to sign as maker, and the note be written and signed, and the loan made on the faith of it, the signature operates as an endorsement, and binds the endorser. *VIOLETT vs. PATTON*, 5 *Cranch's Reports*, 142.

893. Under the law of Virginia, an endorsee of a negotiable promissory note cannot maintain an action at law against his immediate endorser, without proof of the insolvency of the maker, or of a suit against him, even if the maker resided out of the jurisdiction, and the endorser put his name on the note to give it credit with the plaintiff, and took security for his indemnity. *JULANY vs. HODGKIN*, 5 *Cranch's Reports*, 333.

894. By the law of Virginia, no promise is implied in favor of an endorsee by any but his immediate endorser; an action of assumpsit does not lie by an endorsee against a remote endorser, founded on the endorsement. *MANDEVILLE vs. RIDDLE*, 1 *Cranch's Reports*, 290.

895. Under the law of Virginia, the holder of a negotiable promissory note may maintain a bill in equity against a remote endorser to recover its contents. *RIDDLE vs. MANDEVILLE*, 5 *Cranch's Reports*, 322.

896. The right thus asserted is the right of the endorsee who took the note from the defendant; and, therefore, any legal defence valid as against such immediate of the defendant, is valid in equity as against the remote endorsee. *Ibid.*

897. If the drawer of a bill puts it in circulation, bearing a forged endorsement of the name of the payee, and the drawee accepts and pays to a *bona fide* holder for value, he cannot recover back the money paid; his acceptance is a conclusive acknowledgment that he has funds of the drawer, and against him he can charge the amount of the bill, because the drawer is estopped to deny the verity of the endorsement. *HORTSMAN vs. HENSHAW*, 11 *Howard's Reports*, 177.

898. It is not a defence to an action on a bill of exchange by an endorsee for value, against the acceptor, that the bill was drawn for work and labor done, and the acceptance made on the faith of the drawer's promise to make good certain defects in the work, which he had failed to do, though the endorsee had notice of these facts before he took the bill. *ARTHURS vs. HART*, 17 *Howard's Reports*, 6.

899. A *bona fide* holder of a bill may write over a blank endorsement an order to pay to a particular person, before or after the institution of a suit. *EVANS vs. GEE*, 11 *Peters' Reports*, 80.

900. An endorser is liable to an action for non-acceptance; going to trial on the merits is a waiver of a demurrer. *Ibid.*

901. In the absence of any special contract, the first accommodation endorser has no claim on the second for any part of the money paid by the former to take up the note. *MCDONALD vs. MAGRUDER*, 3 *Peters' Reports*, 470.

902. An accommodation endorser of a note, negotiable in the Bank of Alexandria, is, by force of the act of incorporation, liable to an action before the maker has been sued, and though he be solvent. *YEATON vs. BANK OF ALEXANDRIA*, 5 *Cranch's Reports*, 49.

903. A parol promise to accept a particular bill, made to the payee, for a valuable consideration, moving from him to the drawee, binds the promissor, whether the bill had been drawn when the promise was made or not. It is an original promise, and not within the statute of frauds. *TOWNSLEY vs. SUMRALL*, 2 *Peters' Reports*, 170.

904. The facts that the payee knew the drawer had no funds in the hands of the drawee, and intended to apply the bill to pay a debt for which the drawer was also liable, do not affect the case. *Ibid.*

905. A promise to accept, to amount to an acceptance, must apply to the particular bill alleged to be accepted, and describe it in terms not to be mistaken. *BOYCE vs. EDWARDS*, 4 *Peters' Reports*, 111.

906. A general authority to draw cannot be treated as accepting the bills drawn under such authority; it must be declared on as a promise to accept by the promisee, or the party taking the bills on the faith of it. *Ibid.*

907. The drawee is liable only for the rate of interest fixed by the law of the place on which the bill is drawn. *Ibid.*

908. A factor, who has accepted a bill drawn by his principal and an accommodation drawer, and has funds of the principal in his hands, when the bill comes to maturity, is bound to apply those funds to pay that bill. He cannot sue the drawers and maintain that he applied those funds to pay a bill subsequently drawn by the principal alone. *BRAUDER vs. PHILLIPS*, 16 *Peters' Reports*, 121.

909. An endorser of a note, intended to guarantee a bill of exchange, cannot avail himself of want of notice to the drawer of the bill. 2 *Howard's Reports*, 457.

910. An endorser who has settled with the maker, and discharged him from payment, is not entitled to notice of non-payment. *BURKE vs. MCKAY*, 2 *Howard's Reports*, 66.

911. In an action by an endorsee against the maker of a promissory note, evidence that the defendant acknowledged his indebtedness to the plaintiff on the notes, is admissible to prove his signature, as well as the genuineness of the endorsements. *MCKEIL vs. HOLBROOK*, 12 *Peters' Reports*, 84.

912. In an action against the maker of a note, payable at a particular time and place, a demand need not be averred or proved; if the maker was ready, and offered at the time and place to pay, it is matter of defence to be pleaded and proved by him. *WALLACE vs. McCONNELL*, 13 *Peters' Reports*, 136.

913. A letter, written within a reasonable time before and after the date of a bill of exchange, describing it in terms not to be mistaken, and promising to accept it, is, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance, binding the person who makes the promise. *COOLIDGE vs. PAYSON*, 2 *Wheaton's Reports*, 66.

914. The case of *COOLIDGE vs. PAYSON* (2 *Wheaton's Reports*, 66) reviewed, and the rule confirmed, that a promise to accept, to amount to an acceptance, can be by a letter written within a reasonable time before or after the date of the bill, describing it in terms not to be mistaken, promising to accept it, and shown to the person who afterwards takes the bill on the credit of the letter. *SCHIMMELPENNICK vs. BAYARD*, 2 *Peters' Reports*, 264.

915. The following undertaking of the endorser of a promissory note—"I do request that hereafter any notes that may fall due in the Union Bank, in which I am or may be endorser, shall not be protested, as I will consider myself bound in the same manner as if the said notes had been or should be legally protested"—held to be a waiver of demand and notice, both parties having had a course of dealing founded on that construction. *UNION BANK vs. HYDE*, 6 *Wheaton's Reports*, 572.

916. If an endorser, who has not been duly notified, unconditionally promise to pay the note, with a knowledge of all material facts, it is not necessary to prove notice or demand; but saying he knew the maker had not paid it, and was not to pay it, that it belonged to himself alone to pay it, is not sufficient, unless the endorser knew there had been no demand, and that so he was discharged. *THORNTON vs. WYNN*, 12 *Wheaton's Reports*, 183.

917. With some exceptions, notice of the dishonor of a bill need not be given to a drawer who had no funds in the hands of the drawee, or any right to draw. *DICKENS vs. BEAL*, 10 *Peters' Reports*, 572.

918. A drawer had funds in the hands of the acceptor when the acceptance was made, but withdrew them, under an agreement to provide other funds before the maturity of the bill; if the drawer failed to keep this agreement he was not entitled to notice of the dishonor of the bill, for he had no right to expect it would be paid. *RHETT vs. POE*, 2 *Howard's Reports*, 457.

919. If the holder of a bill is unable, by due diligence, to ascertain the residence of the drawer, he is excused from giving him notice of the dishonor of the bill. *Ibid.*

920. Notice left at the store of a son of the endorser, who resided in the same building, but had a usual place of business elsewhere, is not sufficient. *BANK OF THE UNITED STATES vs. CORCORAN*, 2 *Peters' Reports*, 121.

921. Notice to an endorser, left with a fellow boarder, at a private boarding-house where the endorser lodged, he being absent, is sufficient. *BANK OF THE UNITED STATES vs. HATCH*, 6 *Peters' Reports*, 250.

922. If notice has not been left with an endorser, or at his place of residence or business, or deposited in the post for him, the evidence that it duly reached him should be clear and direct. The interests of commerce forbid a departure from the settled rules as to notice, by leaving juries to find actual notice upon loose and indeterminate evidence. *BANK OF THE UNITED STATES vs. CORCORAN*, 2 *Peters' Reports*, 121.

923. Testimony, by a notary, that he sent the notice, is admissible, without producing a copy of the notice or proving its contents. *DICKENS vs. BEAL*, 10 *Peters' Reports*, 572.

924. The holder may either prove the use of due diligence to give notice, or that notice was, in fact, received by the drawer in due season. *Ibid.*

925. Evidence of the routes and course of the post may be admissible upon either of these questions. *Ibid.*

926. Where the holder of a bill inquired of a person trading in a particular place, if he knew where an endorser resided, and he replied that he resided at that place where he traded, and it did not appear that the holder had any better means of knowledge, it was *held*, he had used due diligence to ascertain the place of abode of such endorser, and that a notice put into the post-office, directed to him there, was sufficient. *LAMBERT vs. GHEISELIN*, 9 *Howard's Reports*, 552.

927. After due diligence has been used, and notice sent accordingly, the holder is not obliged to give any further notice, though he should afterwards discover that the notice was directed to a place where the endorser did not reside. *Ibid.*

928. There is no absolute obligation incumbent on the notary, who does not know the residence of an endorser, to inquire of the holder of the note. It depends on the circumstances, the question being whether due diligence has been used to discover his residence. *HARRIS vs. ROBINSON*, 4 *Howard's Reports*, 336.

929. A notary called at the dwelling-house of an endorser, who usually resided in the same town where a note was payable and the holder resided, to give notice of its dishonor. He found the door locked, and, on inquiry of the nearest resident, was informed the endorser and his family had left town on a visit. *Held*, this complied with the obligation of the holder as to notice. *WILLIAMS vs. BANK OF THE UNITED STATES*, 2 *Peters' Reports*, 96.

930. An endorser resided in the country, two or three miles from the town of Georgetown, where the note was payable, and was in the habit

of receiving his letters at the post-office of that place. *Held*, that a notice put into that post-office, and directed to him at Georgetown, was sufficient. *BANK OF COLUMBIA vs. LAWRENCE*, 1 *Peters' Reports*, 578.

931. Where a note is sent by the endorsee to the bank at which it is payable, for collection, and the endorser lives in the same town in which the bank is established, notice must be given to him personally, or left at his dwelling. It is not sufficient to place it in the post-office. *BOWLING vs. HARRISON*, 6 *Howard's Reports*, 248.

932. A notice to an endorser may be given by any agent of the holder, and a notary who has possession of the note is presumed to be such agent. *HARRIS vs. ROBINSON*, 4 *Howard's Reports*, 336.

933. If an endorser is in the habit of receiving his letters at either one of three post-offices, a notice directed to him at either, and sent by mail, is sufficient. *BANK OF THE UNITED STATES vs. CARNEAL*, 2 *Peters' Reports*, 543.

934. Where bills were dated at a particular place, it is due diligence to direct the notice there, in the absence of all knowledge by the holder or the notary that it is not the residence of the drawer. *DICKENS vs. BEAL*, 10 *Peters' Reports*, 572.

935. Such a notice need not declare that a demand was made on the maker at the place where the note was made payable. It is enough if it states a demand on the maker without showing where it was made. 11 *Wheaton's Reports*, 431.

936. Where the second day of grace falls on Saturday, it is the last day of grace; and notice of non-payment given to the drawer of a bill on that day, after a demand upon the acceptor on the same day, after business hours, is sufficient to charge the drawer. *BUSSARD vs. LEVERING*, 6 *Wheaton's Reports*, 102.

937. Notice to the drawer, by putting the same into the post office, where the persons live in different places, is good. *Ibid*.

938. After demand upon the maker of a note, on the third day of grace, notice to the endorser on the same day is sufficient by the general law-merchant. *LINDENBERGER vs. BEALL*, 6 *Wheaton's Reports*, 104.

939. Evidence of a letter, containing notice, having been put into the post-office, directed to the endorser, at his place of residence, is sufficient proof of the notice to be left to the jury, and it is unnecessary to give notice to the defendant to produce the letter before such evidence can be admitted. *Ibid*.

940. Notice sent by mail, the next day after the dishonor of the note, is in due time. *BANK OF ALEXANDRIA vs. SWANN*, 9 *Peters' Reports*, 33.

941. If a bill has been duly presented for payment or acceptance, and the presentment noted, the protest may be drawn up afterwards, when convenient. *BAILEY vs. DOZIER*, 6 *Howard's Reports*, 23.

942. Though a usage existed in the District of Columbia, and had been sanctioned by decisions of this court, not to demand payment of

notes discounted by banks until the day after the third day of grace, yet a note not discounted, and not within this usage, is governed by the law-merchant. *COOKENDORFER vs. PRESTON*, 4 *Howard's Reports*, 317.

943. In a notice to an endorser, it is not necessary to name the holder. *MILLS vs. BANK OF THE UNITED STATES*, 11 *Wheaton's Reports*, 431.

944. A notice which states the demand and dishonor of a note, and that it comes from the holder or his agent, is sufficient, without stating in terms that the holder looks to the endorser for payment. *BANK OF THE UNITED STATES vs. CARNEAL*, 2 *Peters' Reports*, 543.

945. A note for \$1,400, but having the figures \$1,457 in the margin, was described in the notice to the endorser as a note for \$1,457. The parties and the date were correctly named. It was the only note of that maker and endorser in the bank which was described as the holder. *Held*, that the variance was not material. *BANK OF ALEXANDRIA vs. SWANN*, 9 *Peters' Reports*, 33.

946. A variance between the note and its description in the notice is not fatal, unless it render the notice insufficient to apprise the endorser what notice is referred to. *MILLS vs. BANK OF THE UNITED STATES*. 11 *Wheaton's Reports*, 431.

947. Demand on the maker of a note, payable at a bank, need not be averred or proved. Failure to make the demand and damage therefrom is matter of defence. *BRASTON vs. GIBSON*, 9 *Howard's Reports*, 263.

948. On a note payable at and owned by a bank, no formal demand of payment is necessary. It is sufficient if the note is at the bank, and remains unpaid at the expiration of business hours. *BANK OF THE UNITED STATES vs. CARNEAL*, 2 *Peters' Reports*, 543.

949. It is sufficient evidence of a demand of payment of a note made payable at a particular bank, that the note was at the bank, was its property, and was unpaid at maturity. *FULLERTON vs. BANK OF THE UNITED STATES*, 1 *Peters' Reports*, 604.

950. In an action against an endorser, on a note payable at a particular bank, the bank not being the holder, an averment of a demand at that bank is indispensable. *BANK OF THE UNITED STATES vs. SMITH*, 11 *Wheaton's Reports*, 171.

951. But if the bank is the holder, an allegation that the note was presented to the maker and payment refused, under which competent evidence of a demand was introduced at the trial without objection, is so far sufficient that the judgment will not be reversed. *Ibid.*

952. A protest of a bill, payable at and held by a bank, need not state to what officer it was presented, or who replied it would not be paid. A statement that it was presented at the bank, and payment refused, is sufficient. *HILDEBURN vs. TURNER*, 5 *Howard's Reports*, 69.

953. It is not necessary in Mississippi, or by the general law-merchant, that a promissory note should be protested by a notary, or that he should give the notices of the dishonor. *BURKE vs. MCKAY*, 2 *Howard's Reports*, 66.

954. To charge one who endorses a promissory note for the accommodation of the maker, a demand on the maker and notice to the endorser are necessary. *FRENCH'S EXECUTRIX vs. BANK OF COLUMBIA*, 4 *Cranch's Reports*, 141.

955. A demand of payment of a promissory note must be made of the maker, on the last day of grace; and where the endorser resides in a different place, notice of the default of the maker should be put into the post-office early enough to be sent by the mail of the succeeding day. *LENOX vs. ROBERTS*, 2 *Wheaton's Reports*, 373.

956. Where the maker of a note, within ten days before it became payable, had removed into another jurisdiction without the knowledge of the holder, a presentment at his last place of abode in the jurisdiction was held sufficient. *MCGRUDER vs. BANK OF WASHINGTON*, 9 *Wheaton's Reports*, 598.

957. Though the maker of a note be dead, and the endorser be his administrator, a demand on him as administrator, and notice to him as endorser, are necessary to charge him as endorser. *MAGRUDER vs. UNION BANK OF GEORGETOWN*, 3 *Peters' Reports*, 87.

958. But where the note is given with full knowledge of the extent of the encumbrance, and the party thus consents to receive the title, its defect is no legal bar to an action on the note. 2 *Wheaton's Reports*, 13.

959. Any partial defect in the title or the deed is not inquirable into by a court of law, in an action on the note; but the party must seek relief in Chancery. *Ibid.*

960. A notary must present the bill to the acceptor, when he demands the payment thereof; and a protest which states only that payment was demanded, is not admissible in evidence to prove presentment of the bill. This rule of the law-merchant exists in Louisiana. *MUSSEN vs. LAKE*, 4 *Howard's Reports*, 262.

961. A mistake in the christian name of the acceptor, in a copy of a bill of exchange inserted in the protest, the other descriptive particulars being sufficient to identify the bill, does not vitiate the protest. *DENNISTOWN vs. STEWART*, 17 *Howard's Reports*, 606.

962. No protest of a promissory note is necessary, by the common law. *YOUNG vs. BRYAN*, 6 *Wheaton's Reports*, 146.

963. A protest of an inland bill or promissory note, is not necessary, nor is it evidence of the facts stated in it. *UNION BANK vs. HYDE*. 6 *Wheaton's Reports*, 572.

964. When the action is founded on non-payment of bills of exchange, it is not necessary to produce protests for non-acceptance. *CLARKE vs. RUSSELL*, 3 *Dall's Reports*, 415.

965. If a drawee has been in the habit of receiving consignments from the drawer, and has an open account with him, he is not bound to accept a bill, though in fact drawn against a particular shipment, if the letter of advice merely directed him to charge the bill in account, and the state of the account was such that the drawee had no funds of the drawer. 1 *Peters' Reports*, 264.

966. An acceptor *supra* protest, for the honor of the endorser, may, on payment of the bill, recover of the endorser, though he accepted at the instance of the drawee, and as his agent, provided the endorser is not damnified by this indirect mode of proceeding on the part of the drawee. *KONIG vs. BAYARD*, 1 *Peters' Reports*, 250.

967. Under the Virginia act of 1775, the actual consideration, though different from that stated on the face of the bill, governs, and the jury having found that to be such as to take the case out of the statute, the statement on the face of the bill is immaterial. *BROWN vs. BARRY*, 3 *Dallas' Reports*, 3

968. Although the consideration of a promissory note fail, by reason of the failure of the payee to perform his part of the agreement upon which it was given, yet, if a new agreement as a substitute for the old one be entered into between the original parties to the note, this failure of the original consideration creates no equity in favor of the maker of the note against the endorsee, even in Virginia. *YOUNG vs. GRUNDY*, 7 *Cranch's Reports*, 548.

969. Where a promissory note was given for the purchase of real property, *held*, that the failure of consideration, through defect of title, must be total, in order to constitute a good defence to an action on the note. *GREENLEAF vs. COOK*, 2 *Wheaton's Reports*, 13.

970. On the day when a bill was due, a notary went with it several times to the office of the acceptors, but found the doors closed, and no person there to answer his demand. This was held a good demand, although one of the firm resided in the place. *WISEMAN vs. CHIAPPELLA*, 23 *Howard's Reports*, 368.

971. And a protest stating the presentment as above, is *prima facie* evidence that it was made at the proper time of the day. *Ibid.*

972. A presentment for payment, according to the law of the place where the bill is payable, is sufficient; and as the above presentment was good according to the law of Louisiana, the notary making it was held guilty of no negligence. *Ibid.*

973. The words "*ne varietur*," written on a negotiable note by a notary, do not restrain its negotiability by the laws of Louisiana. *FLEEKNER vs. THE BANK OF THE UNITED STATES*, 8 *Wheaton's Reports*, 338.

974. A bill of exchange drawn in one State upon a person in another State, and payable in the latter State, is a foreign bill, within the meaning of the 11th section of the judiciary act. (1 *Statutes at Large*, 78.) And if its holder is competent to sue the defendant in a circuit court, it is of no importance that the original payee was not thus competent. *BUCKNER vs. FINLEY*, 2 *Peters' Reports*, 586.

975. A bill of exchange drawn in Kentucky by one resident of that State on another resident there, but payable in New-Orleans, is a foreign bill, and the holder is entitled, by the law-merchant, to recover of the

drawer, after protest for non-payment, damages for re-exchange; the parties having liquidated those damages, it was presumed they adopted the proper rate. *BANK OF THE UNITED STATES vs. DANIEL*, 12 *Peters' Reports*, 32.

976. The following paper—"No. 959. Mississippi Union Bank, Jackson, (Miss.) February 8th, 1840. I hereby certify that HUGH SHORT has deposited in this bank, payable twelve months from 1st May, 1839, with five per cent. interest till due, fifteen hundred dollars, for the use of HENRY MILLER, and payable only to his order, upon the return of this certificate. \$1,500. WM. V. GRAYSON, Cashier"—not being paid at maturity, and due demand made, and notice to an endorser having been given, held, that it was negotiable, and the endorser liable. *MILLER vs. AUSTEN*, 13 *Howard's Reports*, 218.

977. Though one dealing with an agent is generally bound to know the extent of his powers, yet, if the principal has, by his acts or declarations, authorized a third person to believe that the agent has power to draw, and such third person has taken the agent's bills, the principal cannot accept them for the honor of such third person. *SCHIMMELPENNICK vs. BAYARD*, 1 *Peters' Reports*, 264.

978. If drawees were bound in good faith to accept, they cannot assume the position of acceptors *supra* protest, for the honor of an endorser. *Ibid.*

XXIX. DECISIONS OF THE ENGLISH COURTS.

979. If a promissory note, made payable to the order of A., is backed by B. with his name, at the request of A., and then she places her name on the back under B.'s, but afterwards erases her name and places it above B.'s; this is not such an endorsement of the note by B. to A. as makes him liable as endorser to her. *LEOAN vs. KIRKMAN*, 6 *Common Bench (New Series) Reports*, 929.

980. Notice of dishonor by the maker of a promissory note having been omitted to be given to the endorser, if he writes, in answer to an application for payment, pointing out the hopelessness of suing him, as he had nothing but 7s. 6d. a day, and saying, "had circumstances been different, you may rest assured no application would have been needed," this is not evidence of waiver of notice. *Ibid.*

981. Goods having been ordered by E., were invoiced to "E. and Son," and a bill was drawn for the price on "E. and Son." The bill was accepted in the handwriting of the son, in name of "E. and Son." The son was not a partner, and it was alleged that he accepted the bill only as his father's amanuensis. Held, that if the son had so conducted himself that the drawer of the bill might reasonably have believed, and did believe, that he was a partner, he was liable on the bill. *GURNEY vs. EVANS*, 3 *Hurlstone & Norman's (English) Reports*, 122.

982. One DALTON, wanting money, he and the defendant applied to the plaintiff to draw a bill, to be accepted by DALTON, and endorsed by the defendant, and the defendant promised the plaintiff that he should not be called upon. The jury found that DALTON and the defendant were both principals in the transaction. *Held*, that the plaintiff having paid the bill, was entitled to recover without proofs of a promise in writing under the statute of frauds, section 4. *BATSON vs. KING*, 4 *Hurlstone & Norman's (English) Exchequer Reports*, 739.

983. Action by a holder of a bill of exchange against the drawer. Plea, that the plaintiff, after endorsement to him by defendant, and while holder, and without defendant's consent, agreed with K. to give time to the acceptor, in consideration that K. would see the bill paid; and that plaintiff gave time accordingly; whereby plaintiff discharged defendant from payment. K. was not alleged to be a party to the bill. *Held*, that the plea was bad, inasmuch as the agreement to give time, not being with the principal debtor, but with a stranger, no party to the bill, did not discharge the defendant as surety. *FRASER vs. JORDAN*, 8 *Ellis and Blackburne's (Q. B.) Reports*, 303.

984. In an action on a promissory note, payable on demand, the defendant pleaded, as an equitable defence, that he signed the note only to secure a debt due from one S., (one of the makers,) to the plaintiffs, and that they, knowing this, without the defendant's consent, for a good consideration, agreed to give S. time for payment of the note, whereby the defendant had been damaged. The only evidence in support of the plea was, that S., the principal, had repeatedly prepaid the plaintiffs a certain sum, as interest, in order to obtain forbearance for successive periods of three months. *Held*, that this evidence was insufficient to sustain the plea. *RAYNER vs. FUSSEY*, 4 *Hurlstone & Norman's (English) Reports*, 861.

985. A. obtained an advance of money from a loan society, upon the security of the joint and several promissory note of himself and the defendant, (who, to the knowledge and on the requirement of the society, signed the name as surety,) and of a bill of sale of A.'s furniture. Certain instalments of the note being in arrear, the lenders seized and sold the goods of A. under the bill of sale, and afterwards sued the defendant for the balance. *Held*, that it was competent to the defendant to show, by way of equitable defence, that, but for the mismanagement of the plaintiff's agents, the goods of A. would have realized sufficient to satisfy the whole debt. *MUTUAL, & CO., ASSURANCE vs. SUDLOW*. 5 *Common Bench (New Series) Reports*, 449.

986. The holder of a bill of exchange, on the day after it became due, called at the office of J., the drawer, and on being told that he was engaged, wrote on a scrap of paper, and sent into him the following notice: "B.'s acceptance to J., £500, due 12th January, is unpaid; payment to R. and Co. is requested before four o'clock." The clerk who took in the notice said: "It should be attended to." *Held*, a sufficient notice of dishonor. *PAUL vs. JOEL*, 3 *Hurlstone & Norman's (English) Reports*, 455. S. C., 4 *Ibid*, 355.

987. Also that, under the circumstances, it was a question for the jury whether there was not a sufficient intimation that the bill was dishonored. *Ibid.*

988. One who endorses a bill as surety is entitled to notice of its dishonor, although it be given for the purpose of raising funds for a company in which he (as well as the holder of it) is a shareholder. *MALTASS vs. SIDDLE*, 6 *Common Bench (New Series) Reports*, 494.

989. The court refused to refer an action upon bills of exchange to the master, under the compulsory clauses of the common law procedure act, 1854. *PELLAT vs. MARKWICK*, 3 *Common Bench (New Series) Reports*, 760.

990. To an action by endorsees against the drawers, the court refused to allow, as an equitable defence, a plea that a debt was due to the plaintiffs from a public company, which had professed to assign its business and obligations to the defendants; that the bill was afterwards given by the defendants in consideration of that debt, and upon the supposition that the assignment was legal and valid, whereas it proved to be illegal and void, the proposed plea affording no defence to the action, either legal or equitable. *BALFOUR vs. SEA, &c., ASSURANCE COMPANY*, 3 *Common Bench (New Series) Reports*, 300.

991. The court refused to allow a defendant to plead to an action against him as acceptor of a bill of exchange, that the bill was a renewal of a former bill, which had been accepted upon a direct understanding that it was to be renewed from time to time, until the defendant should be of ability to meet it, he paying, in the mean time, interest at ten per cent.; that the defendant had always performed his part of the agreement, but that the plaintiff had refused to renew the bill upon application for that purpose, although he well knew that the defendant was not of ability to pay it. *FLIGHT vs. GRAY*, 3 *Common Bench (New Series) Reports*, 320.

992. The authority given by a blank acceptance to fill it up for the amount which the stamp will cover, is not lost merely because the drawer, by mistake, ante-dates the instrument a whole year, even although it is made payable some time after date; and if the period has in fact elapsed, from the time of the completion of the instrument, an action may be maintained on it, and the variance will be amendable. *ARMFIELD vs. ALLPORT*. 3 *Hurlstone & Norman's (English) Reports*, 911.

993. An instrument drawn in the form of a bill, payable to bearer, even if accepted in blank, and afterwards filled up by the drawer, may be declared upon by the endorsee, as a promissory note made by the drawer, and endorsed by the drawee. At all events, the variance, if any, will be amendable. *Ibid.*

994. Where a bill is drawn for a given sum, "with interest at ten per cent. per annum," the drawer, on default of the acceptor, is liable for interest at ten per cent. after the maturity of the bill, and notice of the dishonor. *KEENE vs. KEENE*, 3 *Common Bench (New Series) Reports*, 144.

995. A declaration on a bill of exchange against the acceptor, alleged an endorsement by the drawer to the H. Company, and by the company to the plaintiff. Plea, traversing the endorsement by the company. It was proved that the bill had been endorsed in blank by the drawers, and afterwards delivered by them to the company. It was endorsed by two directors "per proc. of the company" to the plaintiff. By the deed of settlement, and resolutions which were duly registered, the directors had no power to endorse the bill. *Held*, that whether or not the company was bound, the endorsement being sufficient to transfer the property, and right of suit on the bill, the allegation in the declaration was proved. *SMITH vs. JOHNSON*, 3 *Hurlstone & Norman's (English) Reports*, 222.

996. Action by endorsee against drawer of a bill of exchange. Plea, that the defendant endorsed the bill, and delivered it to W. to get discounted for the defendant, and pay him the proceeds; that the bill was never discounted for the defendant, nor was there any consideration for his endorsing it, or paying the amount thereof, and W., in fraud of the defendant, endorsed the bill to the plaintiff without consideration. At the trial the defendant proved that he endorsed the bill in blank, and delivered it to W. to get discounted for him, which W. promised to do, and bring him the money on the following morning. W. took away the bill, but never returned, and the defendant heard no more of it until payment was demanded by the plaintiff's attorney. *Held*, sufficient evidence of illegality to cast on the plaintiff the *onus* of proving consideration. *HALL vs. FEATHERSTONE*, 3 *Hurlstone & Norman's (English) Reports*, 284.

997. To a declaration by endorsee against acceptor of a bill of exchange for £300, the defendant pleaded, as to £272 2 shillings and seven pence, that before the endorsement or acceptance he applied to the drawer to advance him £300, which the drawer agreed to do, on his depositing certain canvas with him and accepting the bill, the drawer to have power of selling the canvas and applying the proceeds in payment of the bill, if not paid by the defendant when due; that the bill was accepted and the canvas deposited on the terms aforesaid; that after the bill was due, the drawer sold the canvas, and received the proceeds, £272 2s. 7d., and holds the same, and that the bill was endorsed by the drawer to the plaintiff after it became due, and subject to the equity of the proceeds of the sale of the canvas being applied to the payment of the bill, and without value. *Held*, by the court of Exchequer Chamber, (affirming the judgment of the court of Exchequer,) that the plea was good. *HOLMES vs. KIDD*, 3 *Hurlstone & Norman's (English) Reports*, 891.

THE LAW OF USURY.

DECISIONS OF THE COURTS OF THE SEVERAL STATES RELATING TO USURY.

I. CONNECTICUT,	V. NEW-HAMPSHIRE,	IX. PENNSYLVANIA,
II. ILLINOIS,	VI. NEW-JERSEY,	X. VERMONT,
III. INDIANA,	VII. NEW-YORK,	XI. SUPREME COURT U. S.
IV. MASSACHUSETTS,	VIII. OHIO,	

I. CONNECTICUT.

1. A rail-road company, by the authority of the legislature, issued bonds, payable at a future time, with interest payable semi-annually, at the rate of seven per cent. The bonds became due and remained unpaid. *Held*, that the damages to which the holders were entitled for the detention of the principal after it became due, were to be estimated at the contract rate of seven per cent., and not at the legal rate of interest, six per cent. *BECKWITH vs. TRUSTEES OF HARTFORD, PROVIDENCE AND FISHKILL RAIL-ROAD*, 29 *Connecticut Reports*, 268.

II. ILLINOIS.

2. It is an error to allow compound interest. *LEONARD vs. ADMINISTRATOR OF VILLARS*, 23 *Illinois Reports*, 377.

3. The interest laws of 1845 and 1849 are in *pari materia*, and should be so construed as that both may stand. The latter allows six instead of ten per cent. interest for money loaned, leaving the penalty provided in the fourth section of the former law in force, where more than ten per cent. is reserved for money loaned. *KINSEY vs. NISLEY et al.*, 23 *Illinois Reports*, 505.

4. Where it is shown, under the act of 1849, that ten per cent. has been reserved on a contract, other than for loaned money, there is only a forfeiture of the over-charged interest. *Ibid.*

5. The defence of usury must be pleaded specially, otherwise it will be held to be waived. *SMITH vs. WHITAKER*, 23 *Illinois Reports*, 367.

6. Where it appears that A. and others gave their note to B., to satisfy a debt due from C., and that the note was usurious, any pretence that it was otherwise will not avail the payee. *NICKERSON et al. vs. BABCOCK*, 23 *Illinois Reports*, 561.

III. INDIANA.

7. A clause in the charter of a corporation authorizing the company to borrow money "on such terms as might be agreed upon between the parties," empowers them to borrow at a rate of interest beyond that established by the general law. *MORRISON vs. THE EATON, &C., RAIL-ROAD COMPANY*, 14 *Tanner's (Indiana) Reports*, 110.

8. A tender of the simple value of a specific article, after failure to deliver, is not sufficient; interest to the time of the tender should be included. *HAMAR vs. DIMMICK*, 4 *Tanner's (Indiana) Reports*, 105.

9. A. sold to B. two bonds of the Cincinnati and Chicago Rail-Road Company, of \$500 each, payable on the first of May, 1859, at Cincinnati, in the State of Ohio, to JOHN McLEAN, a citizen of that place, with ten per cent. interest; which, by the law of that State, was a legal rate of interest. A. guaranteed to B. the payment of the bonds according to their tenor. Subsequently, and before the maturity of the bonds, A. took them up, substituting his own agreement to pay to B. the principal and interest of the bonds, as by his guaranty he was already bound to do in case of default by the company. *Held*, that the bonds, being payable in Ohio, are, at common law, to be regarded as made in that State; and that our statute, which provides that rail-road companies may dispose of their bonds at such rate of interest as is allowed by the laws of the State where such contract is made, (*Revised Statutes*, 1852, vol. 1, page 417,) has not changed this rule as to rail-road companies. *BUTLER et al. vs. EDGERTON*, 14 *Tanner's (Indiana) Reports*, 15.

10. The reservation of ten per cent. interest on the bonds, being valid and not usurious by the laws of Ohio, the guaranty of A. was also valid; and the agreement sued on being merely substituted as a security, was not tainted with usury. *Ibid.*

11. In reality, the instrument sued on amounts only to an agreement to pay a given sum of money, being the amount of the principal and interest of the bonds. *Ibid.*

12. Our statute fixing the legal rate of interest, &c., (1 *Revised Statutes*, 1852, pages 343, 344,) was not intended to inhibit a party from having two prices for his property—one a cash price, and the other a time price; but if a price is agreed upon, and time is given, no greater rate of interest than the statute allows can legally be contracted for. *BORUM vs. FOUTS et al.*, 14 *Tanner's (Indiana) Reports*, 50.

13. Under our statute, usury or illegal interest may exist without the actual loan of money. *Ibid.*

14. Where a mortgagor appears to the action to foreclose, and pleads usury in the transaction, his vendee of the mortgaged premises, with his consent, may assume the same defence. *Ibid.*

15. An amount added to a note, in consideration of forbearance, must be regarded as interest, though the parties may not so understand it. *REED vs. HELM*, 14 *Tanner's (Indiana) Reports*, 428.

16. An action of foreclosure will lie upon a mortgage for interest due upon the notes secured thereby, though no part of the principal is due. *SMART vs. MCKAY et al.*, 16 *Harrison's (Indiana) Reports*, 45.

17. A. executed to B. his two promissory notes, "bearing ten per cent. interest yearly from date." After the death of A., his executors and the payees of the notes called upon two persons to compute the amount then due upon the notes, and the supposed balance having been ascertained, a part of the amount was paid by the executors, and a note executed by them for the residue. Suit by the executors, alleging a mistake in the computation, and to recover an excess alleged to have been paid by them over the sum actually due. *Held*, that a failure to pay the interest annually, even if it could have been required before the notes fell due, did not authorize a compounding of the interest, unless an agreement had been made to pay interest on the interest. *GRIMES vs. BLAKE, EXECUTOR, &c.*, 16 *Harrison's (Indiana) Reports*, 160.

18. Suit upon two notes, made in Ohio, and payable with ten per cent. interest. Judgment for the amount of the notes, with the stipulated interest. *Held*, that as the notes were payable generally, they were payable everywhere, and not specially at the place of residence of the makers. *ENGLER et al. vs. ELLIS et al.*, 16 *Harrison's (Indiana) Reports*, 475.

19. If the notes were payable in this State, they would still be good for the stipulated interest, unless that rate was prohibited by the law of Ohio, which was not made to appear. *Ibid.*

20. Where an answer, setting up usury, professes to answer the whole cause of action, when it in fact shows a bar to a part only, it is bad. *MOORMAN et al. vs. BARTON*, 16 *Harrison's (Indiana) Reports*, 39.

21. Where a new contract is entered into for the payment of a precedent debt, upon which interest has accrued, and by the new contract usury is taken or reserved, the "principal" which the creditor may recover under our usury law (1 *Revised Statutes*, section 4, page 344) is the amount of the principal of the precedent debt, with legal interest thereon, up to the time of making the usurious contract. *PRATT et al. vs. WALLBRIDGE*, 16 *Harrison's (Indiana) Reports*, 147.

22. A plea setting up usury in the new contract, in bar not only of the illegal interest taken or reserved thereon, but of the legal interest which had accrued upon the precedent debt, is bad, because the facts are pleaded in bar of too much. *Ibid.*

23. A plea of usury must specify the particulars of the contract upon which the usurious interest is alleged to have been taken or reserved. *ENGLEB et al. vs. COLLINS*, 16 *Harrison's (Indiana) Reports*, 189.

24. A plea of usury, which purports to answer the whole cause of action, when the facts pleaded are a bar to a part only of the claim, is bad on demurrer. *MOORMAN et al. vs. BARTON*, 16 *Harrison's (Indiana) Reports*, 206.

25. An agreement to extend the time of payment of a promissory note, in consideration of usurious interest, is not binding, and will not discharge a surety. *BROWN vs. HARNES*, 16 *Harrison's (Indiana) Reports*, 248.

26. If the maker of a promissory note, tainted with usury, procures a third person to pay the note for him, and gives to such person a new note for the amount thus paid, he cannot, in a suit upon such note, set up the usury in the original note. *PENCE vs. CHRISTMAN*, 14 *Tanner's (Indiana) Reports*, 257.

IV. MASSACHUSETTS.

27. In an action for the balance of a legacy, the amount due is to be stated by making annual rests, adding the interest each year to the principal, and deducting the payments made during the year, and making the residue a new capital. *MILLER vs. CONGDON*, 14 *Gray's (Massachusetts) Reports*, 114.

NEW-HAMPSHIRE.

28. Where the defendant pleaded usury, and prayed a deduction of three times the amount, in the mode prescribed by the statute, and upon a denial of all usury by the plaintiff under oath, judgment was rendered against the defendant. *Held*, that this finding was conclusive upon the fact of usury, and that it was not open to the defendant to prove it upon the general issue, to show want of consideration to the extent of the unlawful interest. *DIVOLL vs. ATWOOD*, 4 *Chandler's (New-Hampshire) Reports*, 443.

29. In a writ of entry on a mortgage, the defendant may reduce the amount of the conditional judgment by a deduction of three times the unlawful interest reserved or taken. *Ibid.*

30. His plea in such case may be with a general verification, with a view to an issue as at common law; or with a special verification under the statute, in which case the oath of the defendant must be tendered. *Ibid.*

31. A replication to such plea, setting out a suit upon the notes secured by the same mortgage, a plea of usury under the statute, a denial of the usury by the plaintiff, verified by his oath, and a judgment against the defendant upon the plea, is good, as showing the matter to be *res judicata*; but without an allegation of such judgment, the plea is bad. *Ibid.*

VI. NEW-JERSEY.

32. The true rule of calculating interest where partial payments have been made, is to cast the interest on the principal to the time of the first payment; and if the payment equals, or is greater than the interest, deduct the payment; if the payment does not equal the interest, it is not to be credited until, with future payments, it equals or exceeds the interest then due. *BAKER vs. BAKER*, 4 *Dutcher's Reports*, 13.

33. If an erroneous rule of computing interest is adopted, with the knowledge and consent of the parties, although adopted ignorantly, it is a mistake in law; but if there is mistake in the calculation, it is a mistake of fact. *Ibid.*

VII. NEW-YORK.

34. *It seems*, that the mere fact, that on a contract for the sale of land, a higher than the legal rate of interest is reserved upon the deferred payments, does not render the transaction usurious. *CUTLER vs. WRIGHT*, 8 *Smith's (New-York) Reports*, 472.

VIII. OHIO.

35. Where, at the time of the negotiation of a loan, there was an understanding that usurious interest was to be paid annually in advance, in addition to the highest legal rate to be expressed in the note, and to be paid at the end of any year during which the loan continued, it being contemplated to continue the loan from year to year, at the wish of the borrower, upon the terms stated; but to secure the loan, a note with sureties was given and received, which, though expressing the rate of interest, and that the interest was to be paid annually, was, in legal effect, payable immediately. *Held*, that the understanding of the parties was controlled by the terms of the note, and that the giving time afterwards, in pursuance of the understanding, was not giving time under an obligatory contract, and did not discharge the sureties. *JONES et al. vs. BROWN*, 11 *Critchfield's (Ohio) Reports*, 601. See *McCOMB vs. KITTRIDGE*, 14 *Ohio Reports*, 348, title "Banks."

IX. PENNSYLVANIA.

36. Where the will, creating a trust, made it the duty of the trustee to invest the surplus of unexpended income, the trustee will be surcharged with interest on the amount, though so small as to make investment difficult. *MCCAUSLAND'S APPEAL, Wright's Reports, 466.*

37. A trustee is liable for interest on moneys received by him, and which he neither invested nor paid over, in compliance with the duties of his trust. *Ibid.*

X. VERMONT.

38. Payments of usurious interest, *eo nomine*, for the loan of money represented by a note, which in itself contains no usury, can be recovered back by the party making them, whether the note is paid in full or not; and the fact that such payments have been made by the principal will not avail the surety as a defence *pro tanto*, in an action on the note against him alone. *WARD vs. WHITNEY, 3 Shaw's (Vermont) Reports, 89.*

39. The right to recover such usurious payments, or to have them applied as payments upon, or offsets to the note, is confined to the party who has paid the usury. *Ibid.*

40. C. borrowed \$1,500 of the orator, and gave him his note for the amount, with interest, and secured the same by mortgage. He paid the orator seven per cent. interest upon the note for several years, and the annual endorsements of these payments showed the amount actually paid, and expressed them to be as and for each year's interest. In a petition for foreclosure of this mortgage against C. and a subsequent mortgagee, C. having, without consideration, released to the orator all claims of usurious interest paid by him, it was *held*, that the subsequent mortgagee was not entitled to have the excess of such annual payments of interest, over six per cent., applied in reduction of the amount due upon the note. *CHURCHILL AND WIFE vs. COLE et al., 3 Shaw's (Vermont) Reports, 93.*

XI. SUPREME COURT OF THE UNITED STATES.

41. An agent who advances his money, at New-Orleans, upon an undertaking of his principal to replace it there, by accepting and paying bills drawn there by the agent, is liable to pay the New-Orleans rate of interest, if he dishonors the bills. *LANUSSE vs. BARKER, 3 Wheaton's Reports, 101.*

42. A contract for the loan of money, entered into in Rhode Island, is to be governed by the usury laws of that State, though security was agreed to be taken upon lands in Kentucky. *DE WOLF vs. JOHNSON, 10 Wheaton's Reports, 367.*

43. A contract tainted by usury, according to the laws of one State may be a valid basis for a new contract in another State. *Ibid.*

THE LAW RELATING TO NOTARIES PUBLIC.

1. A notary public, who undertakes to protest a note and notify the parties for a compensation, is liable, if he negligently fails to give due legal notice. *BOWLING vs. ARTHUR*, 34 *Mississippi* (5 *George*) *Reports*, 41.

2. If a notary, in taking the acknowledgment of a deed, neglect to state in his certificate that the party was personally known to him, or properly identified, he is guilty of gross negligence, for which he is responsible. *FOGARTY vs. FINLAY*, 10 *California Reports*, 239.

3. It is no excuse to him that the blank certificate had been partly filled up by the grantee's attorney; it is the duty of the notary to see to it, that the certificate is correct; it is as faulty to sign without reading it, as to sign an incomplete one. *Ibid.*

4. The party is guilty of no negligence in not seeing to it that the certificate is correct, as he has a right to rely on the professional skill and duty of the notary. *Ibid.*

5. A notary's power to take and certify acknowledgments is derived solely from the statute, and is not *ex officio*, and, therefore, can be exercised on in strict conformity with the statute. *BOURS vs. ZACHARIAH*, 11 *California Reports*, 281.

6. To take and to certify the taking of an acknowledgment are parts of one transaction, to be completed at one time; therefore, the certificate cannot be subsequently altered or amended. *Ibid.*

7. No demand is necessary to be made of a clerk for money which he has received officially, and is bound to pay over. *LITTLE vs. RICHARDSON*, 6 *Jones' (North Carolina) Law Reports*, 305.

8. In cases where it is admissible to dispense with personal service of a notice, the notice ought, in general, to be served in the form required for citation and other analogous proceedings. *MCDERMOTT vs. CANNON*, 14 *Louisiana Annual Reports*, 313.

9. In computing the time of giving a notice, either the day of giving, or the day of the performance, is to be excluded. *MITCHELL vs. WOODSON*, 37 *Mississippi* (8 *George*) *Reports*, 567.

10. A publication once a week for one month, means once a week, the first and last days, excluding one and including the other, to be a calendar month apart. *Ibid.*

11. If the vendee be told by the vendor, just before the time for delivery, that the goods will not be delivered, because they have been sold to another, no demand is necessary. *FOSTER vs. LEEPER*, 29 *Georgia Reports*, 294.

12. Notice to a broker who is employed to make sale of a check, that the paper of the maker of the check has laid over unpaid, is notice to the principal. *BROWN vs. MONTGOMERY*, 20 *New-York (6 Smith) Reports*, 287.

13. Although a party has notice of circumstances, putting him upon inquiry, yet if he with due diligence inquires and becomes satisfied by evidence upon which a man may reasonably rely, that a fact does not exist, then he is to be regarded as acting *bona fide*, and without notice of such fact. *HOYT vs. SHELDON*, 3 *Bosworth's (N. Y.) Reports*, 267.

14. Where one has notice of an opposing claim he is put upon inquiry, and is presumed to have notice of every thing which a proper inquiry would have enabled him to discover. *BLACKWOOD vs. JONES*, 4 *Jones' (North Carolina) Equity Reports*, 54.

15. Notice to the attorney and agent of a party is notice to his principal. *REED'S APPEAL*, 34 *Pennsylvania State Reports*, 207. *WALKER vs. AYRES*, 1 *Clarke's (Iowa) Reports*, 449.

16. No demand on an agent is necessary, where the ground of action is the agent's breach of duty, by which less money came to his hands for the principal than otherwise would, and also for the failure of the former to pay over the money actually received. *DEVER vs. BRANCH*, 18 *Texas Reports*, 615.

17. An agreement to return a note, will, after a reasonable time, support an action, without any demand or refusal. *HENLEY vs. BUSH*, 38 *Alabama Reports*, 636.

NEW USURY LAWS OF THE STATES.

1. MAINE,	10. DELAWARE,	18. CALIFORNIA,	26. MINNESOTA,
2. NEW-HAMPSHIRE,	11. MARYLAND,	19. FLORIDA,	27. MISSISSIPPI,
3. VERMONT,	12. VIRGINIA,	20. ILLINOIS,	28. MISSOURI,
4. MASSACHUSETTS,	13. NORTH CAROLINA,	21. INDIANA,	29. OHIO,
5. RHODE ISLAND,	14. SOUTH CAROLINA,	22. IOWA,	30. OREGON,
6. CONNECTICUT,	15. GEORGIA,	23. KENTUCKY,	31. TENNESSEE,
7. NEW-YORK,	16. ALABAMA,	24. LOUISIANA,	32. TEXAS,
8. NEW-JERSEY,	17. ARKANSAS,	25. MICHIGAN,	33. WISCONSIN.
9. PENNSYLVANIA,			

MAINE.

I. *Interest*.—The legal rate of interest in Maine is six per cent., and no higher rate is allowed on special contracts. (R. S. 322. Cap. 45, sec. 2.)

II. *Penalty for Violation of the Usury Laws*.—Excess of interest not recoverable, nor costs where excess of interest has been taken; but the defendant may recover costs of the party taking the excess. Excess of interest may be recovered back by the party having paid it. The provisions do not extend to *bona fide* holders of negotiable paper for value without notice. (R. S. 323. Cap. 45, secs. 2 and 3. Laws of 1862, ch. 136.)

III. *Damages on Bills*.—The damages on bills of exchange negotiated in Maine, payable in other States, and returned under protest, are as follows: (R. S. 519. Cap. 82, sec. 35:)

1. New-Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New-York, 3 per cent.
2. New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia, South Carolina, Georgia, 6 per cent.
3. All others, namely, North Carolina, Alabama, Arkansas, Florida, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, Texas, Wisconsin, California, 9 per cent.

IV. *Sight Bills*.—Grace is allowed on bills, drafts, checks, &c., payable in this State at a future day or *at sight*, but not on those payable on demand. (R. S. 264.)

Decisions.

The legislature of a State may constitutionally impose a tax on the capital stock, &c., of a bank previously incorporated by it, unless the right has been expressly relinquished. *Portland Bank vs. Apthorp*, 12 Mass. 252; *Providence Bank vs. Billings*, 4 Pet. 514; *Judson vs. State*, Minor, 150.

When the interest on a note is payable annually, so much as has accrued more than six years before the commencement of an action thereon, will be barred by the statute of limitations, if the note be not witnessed, though the note being payable on time, be recoverable, with the interest which has become due within six years. 5 Green R. 81.

The law does not authorize the recovery of interest upon interest, though a promissory note is made payable with interest annually; (7 Green R. 48) but the taking compound interest is not usury. 1 Fairfield's R. 315.

II. NEW-HAMPSHIRE.

Interest.—The legal rate of interest in New-Hampshire is six per cent., and no more is allowed on contracts, direct or indirect.

II. *Penalty for Violation of the Usury Laws.*—The person receiving interest at a higher than the legal rate, shall forfeit for every such offence three times the sum so received.

III. *Damages on Bills.*—No statute in force in New-Hampshire.

IV. *Foreign Bills.*—No statute in force in New-Hampshire allowing damages on foreign bills returned under protest.

V. *Sight Bills.*—No bill of exchange, negotiable promissory note, order, or draft, except such as are payable *on demand*, shall be payable until days of grace have been allowed thereon, unless it appear in the instrument that it was the intention of the parties that days of grace should not be allowed. (Revised St. 389, § 10.)

Decisions.

A protest by a notary at the place of payment, duly authenticated, is the regular evidence of the dishonor of a foreign bill; but a protest is not competent evidence of the dishonor of an inland bill of exchange. 9 N. H. R. 558.

The dishonor of a promissory note need not be proved by a protest, even if the maker and indorser reside in different governments. 10 N. H. R. 526.

Interest.—Any interest on money lent was, at common law, unlawful; but that doctrine has never been adapted here, and no rate of interest is unlawful here at common law unless so great as to be unconscionable. 2 N. H. R. 42.

When a promissory note has been paid and discharged, it ceases to be negotiable. 2 N. H. R. 212; 5 ib. 63. The principle of the case in 2 N. H. R. 212 is to be restrained to cases where the party to the bill or note is prejudiced by a subsequent transfer. 7 N. H. R. 202. But the note ceases to be negotiable, except against those by whom a new indorsement has been made, and those who are bound to pay at all events. *Ibid.*

A promissory note imports a consideration until the contrary appears (6 N. H. R. 511); and the acknowledgment of value received in a note not negotiable is *prima facie* evidence of a consideration. 5 N. H. R. 315.

The time when a note payable on demand shall be considered as dishonored depends on the circumstances of the case; but in general it will be considered so in ten months from its date (5 N. H. R. 159); and a note indorsed four months and twenty-two days from its date was treated as dishonored. 6 N. H. R. 369.

Although a note be payable at a particular time and place, no demand is necessary at the time and place. 3 N. H. R. 333; 10 ib. 433.

The want of a demand upon the maker may be excused by evidence of a diligent inquiry for him without success. 3 N. H. R. 346.

A note payable on demand, with interest after sixty days, is payable on demand, and the words "after sixty days" refer only to the interest. 5 N. H. R. 99.

A note payable on contingency, may be declared upon as a note strictly negotiable. 5 N. H. R. 315; 10 ib. 447.

A contract for the delivery of specific articles can not be declared on as a bill. 3 N. H. R. 299. See also 5 ib. 316; 10 ib. 447.

Bills drawn upon inhabitants of other States are foreign bills. 9 N. H. R. 558.

A negotiable promissory note will not be a discharge of a preëxisting debt, unless there be an express agreement to receive it as such in payment. 10 N. H. R. 505

If the holder of a note receive an acceptance, to be collected and applied in payment, he must exercise reasonable diligence in the collection; and if he does not, his debt will be discharged. 8 N. H. R. 66.

III. VERMONT.

I. Interest.—The legal rate of interest in Vermont is six per cent., and no higher rate of interest is allowed on special contracts, except upon railroad notes or bonds, which may bear seven per cent.

II. Penalty for Violation of the Usury Laws.—The excess of interest received beyond six per cent. may be recovered by action of assumpsit.

III. Damages on Bills of Exchange.—There is no statute in force in Vermont in reference to damages on protested bills of exchange.

IV. Foreign Bills.—There is no statute in force in Vermont in reference to damages on protested foreign bills of exchange.

V. Sight Bills.—Grace is not allowed on bills, drafts, checks, etc., payable at sight or on bills and notes made and payable within the state. (R. S. xxiii. § 1.)

Revised Statutes. Chap. 73.

SEC. I. All bills of exchange, drafts, and promissory notes, executed in any other State, and payable in this State, and all such bills, drafts, and notes, executed in this State, and payable in any other State, shall be entitled to the usual mercantile privileges of three days' grace.

SEC. II. The provisions of the foregoing section shall not extend to any contract payable on demand, or in any way but in money.

SEC. III. Whenever any bill or note, or other contract, not subject to grace shall fall due on the Sabbath, the same shall, for every purpose, be taken and considered as due on the Monday next following.

No. XXIII. *An Act relating to the Time of Payment of Bills of Exchange, Drafts, Checks, and Notes. Approved November 6, 1850. Took effect January 1, 1851.*

SEC. 1. The provisions of the first section of the seventy-third chapter of the Revised Statutes shall not extend to any contract, made after this act shall take effect, payable at sight.

SEC. II. The following days, to wit, the first day of January, commonly called New Year's day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas; and any day appointed or recommended by the Governor of this State, or by the President of the United States, as a day of fast or thanksgiving, shall for all purposes whatsoever, in regard to the presenting for acceptance, or payment, and to the protesting and giving notice of the dishonor of bills of exchange, drafts, checks, and promissory notes, made after this act shall take effect, be treated and considered as is the first day of the week, commonly called Sunday.

SEC. III. Whenever any bill or note or other contract not subject to grace made after this act shall take effect, shall fall due on either of the days designated by the second section of this act, the same shall for every purpose be taken and considered as due on the first day next following, which shall not be Sunday, or one of the days designated as aforesaid.

Decisions.

A note under seal becomes a specialty, and no action can be maintained upon it in the name of an indorsee. 1 D. Ch. 244.

A promissory note, given and received in payment of an antecedent account, is a bar to an action on that account, whether the note be paid or not, if there be no fraud or deception in giving the note. 4 Vt. 549.

Usury.—A bona-fide debt, or demand, contracted upon a legal consideration, is not destroyed by being mingled with an usurious transaction, or being made in whole or in part the consideration of an usurious contract. 6 Vt. 551.

The insolvency of the maker will not excuse the indorsee from giving notice to the indorser. 2 Aik. 9.

IV. MASSACHUSETTS.

I. *Interest.*—The legal rate of interest in Massachusetts is six per cent., and no higher rate is allowed on special contracts.

II. *Penalty for Violation of the Usury Laws.*—No contract for the payment of money with interest greater than six per cent. shall be void; but in an action on such contract the defendant shall recover his full costs, and the plaintiff shall forfeit three-fold the amount of the whole interest reserved or taken.

III. *Damages on Bills of Exchange.*—The damages on bills of exchange negotiated in Massachusetts, payable in other States, and returned under protest, are as follows:

1. Bills payable in Maine, New Hampshire, Vermont, Rhode Island, Connecticut, or New York, 2 per cent.
2. Bills payable in New Jersey, Pennsylvania, Maryland, or Delaware, 3 per cent.
3. Bills payable in Virginia, District of Columbia, North Carolina, South Carolina, or Georgia, 4 per cent.
4. Bills payable elsewhere within the United States or the Territories, 5 per cent.
5. Bills for one hundred dollars or more, payable at any place in Massachusetts, not within seventy-five miles of the place where drawn, 1 per cent.

IV. *Foreign Bills.*—The damages on foreign bills of exchange, returned under protest, are as follows:

1. Bills payable beyond the limits of the United States (excepting places in Africa, beyond the Cape of Good Hope, and places in Asia and the islands thereof) shall pay the current rate of exchange when due, and five per cent. additional.
2. Bills payable at any place in Africa, beyond the Cape of Good Hope, or any place in Asia or the islands thereof, shall pay damages, 20 per cent.

V. *Sight Bills.*—Bills of exchange, drafts, etc., payable *at sight*, or at a future day certain, within this State, are entitled to three days' grace. But not bills, notes, drafts, etc., payable *on demand*.

VI. *Notes on Demand.*—In order to charge an indorser, payment must be demanded within sixty days from its date, without grace, on any note payable *on demand*.

Decisions and Statute.

Interest is to be computed at the rate established by the law of the place where the debt of which it is an incident is contracted and is to be paid. 9 Metcalf, 210.

Money lent without any stipulation for interest does not necessarily draw interest until neglect or refusal of payment, after demand made, or some other default of the borrower. Ibid, 124.

Whenever any bank shall charge or receive more than six per cent. per annum, and the existing rate of exchange, the Bank Commissioners, upon information, shall report such fact to the Treasurer, who shall forthwith prosecute said bank.—1840.

V. RHODE ISLAND.

I. *Interest.*—The legal rate of interest in Rhode Island is six per cent., and no higher rate is allowed on special contracts.

II. *Penalty for Violation of the Usury Laws.*—Forfeiture of the excess taken above six per cent.

III. *Damages on Bills.*—The damages on bills of exchange, payable in other States, and returned under protest, are uniformly..... 5 per cent.

IV. *Foreign Bills.*—The damages on foreign bills of exchange, returned under protest, are..... 10 per cent.

V. *Sight Bills.*—By statute it is provided that "all bills of exchange drawn at sight, which shall be due and payable in this State, (Rhode Island,) shall be deemed to be due and payable on the day of presentation, without grace."

Remarks.

If any action shall be brought upon any bond, mortgage, specialty, agreement, contract, promise or assurance whatever, which *shall be made within this State*, and the defendant shall allege, by a special plea, that a higher or greater interest than the rate aforesaid was taken, or was therein or thereby secured or agreed for, the court shall and may admit the defendant as a legal witness, upon the issue joined, and also, on motion of the plaintiff, admit such plaintiff as a legal witness in like manner; and if on the whole evidence such agreement shall be found usurious, the plaintiff shall have judgment for the principal sum of money, or real value of the goods, wares or other commodity, with legal interest thereon, with costs. "Provided, always, that nothing in this act shall extend to the letting of cattle, or other usages of the like nature in practice among farmers, or to maritime contracts among merchants, as bottomry, insurance or course of exchange, as hath been heretofore accustomed."

In an action for usury, the defendant may be admitted as a legal witness, upon issue joined in such action or suit, to testify relative to the nature and circumstances of such agreement, and on motion of the plaintiff, the court shall also admit him in like manner. Public Laws of R. I. 286.

If any bank, or any officer of any bank, or any other person in behalf thereof, shall directly or indirectly, knowingly demand or receive from the maker, endorser or holder of any promissory note or bill of exchange, or obligation of any description, for the payment of money at a future day, upon the discount thereof, by or on account of such bank, any greater interest or discount, under any form or pretence whatever, than at the rate of six per cent. per annum, the officer or other person knowingly demanding or receiving in behalf of such bank such excessive interest or discount, shall forfeit and pay for each offence the sum of five hundred dollars, to and for the use of the State; to be recovered by action of debt in the name of the General Treasurer, before any court proper to try the same; Provided, however, that it shall not be construed to be any violation hereof to demand or receive interest or discount for periods less than one year, at the rate of six per cent. for three hundred and sixty days; Provided further, that nothing in this act shall prohibit any bank from demanding or receiving the existing rate of exchange on drafts, bills of exchange, promissory notes, payable at other places than the town wherein the bank discounting the same shall be located. Ib. 293.

Damages.—It shall be lawful for any person having a right to demand any sum of money upon a foreign protested bill of exchange as aforesaid, to commence and prosecute an action for principal, damages, interest and charges of protest, against the drawers or endorsers, jointly or severally, or against either of them separately; and judgment shall and may be given for such principal, damages and charges, and interest upon such principal after the rate aforesaid, to the time of such judgment, together with costs of suit. R. S. 287.

VI. CONNECTICUT.

I. *Interest*.—The legal rate of interest in Connecticut is six per cent, and no higher rate is allowed on special contracts. Banks are forbidden, under penalty of \$500, from taking directly or indirectly over 6 per cent. Law passed May, 1854.

II. *Penalty for Violation of the Usury Laws*.—Forfeiture of all the interest received. In suits on usurious contracts, judgment is to be rendered for the amount lent, without interest.

III. *Damages on Bills*.—The damages on bills of exchange negotiated in Connecticut, payable in other States, and returned under protest, are as follows:

1. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, New York (interior), New Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia, 3 per cent.
2. New York City, 2 per cent.
3. North Carolina, South Carolina, Georgia, and Ohio, . . . 5 per cent.
4. All the other States and Territories, 8 per cent.

IV. *Foreign Bills*.—There is no statute in force in Connecticut in references to damages on foreign bills of exchange.

V. *Sight Bills*.—Grace is not allowed by statute or usage on checks, bills, etc., payable at sight.

Decisions.

Bills of Exchange and Promissory Notes.—Bills or notes, to be negotiable, must be drawn payable to the payee or order, or bearer, or to the order of the payee.

By statute, notes to be negotiable must be for the payment of thirty-five dollars or upwards.

A bill or note payable to a man's own order is payable to himself if he did not order it paid to any other. Hosmer, Ch. J., 4 Conn. R. 247.

A parol acceptance is sufficient; and this may be expressed or implied. Baldwin, J., 5 Day, 516.

As between the original parties to a bill of exchange, the want of a consideration, total or partial, may be shown, and though a subsequent holder *bona-fide*, and for value paid, shall not be affected by a want of consideration between the prior parties, yet if he received the bill without consideration, he is in privity with the first holder, and the want of consideration is equally provable and available against him. 6 Conn. R. 521.

If a partner of a firm draw a bill in his own name upon the firm of which he is a member, for the use of the partnership concern, it is in contemplation of law an acceptance of the bill by the drawer in behalf of the firm; and the holder of the bill may sustain an action thereon against the firm as for a bill accepted. 5 Day, 511.

An agreement to pay interest upon interest, which has become due, is not usurious. 11 Conn. R. 487.

A parol promise to pay more than lawful interest, made at the giving of a note, and to induce the creditor to take it, and which is part and parcel of the contract, will make the note usurious and void. 2 Root, 37.

Where an instrument contaminated with usury is taken up, and a new one substituted by the parties to secure to the creditor the original debt, the substituted as well as the original security is usurious and void. 5 Conn. R. 154. And it makes no difference whether the party in whose name the substituted security is given was privy to, or ignorant of, the original corrupt agreement. *Ibid*.

VII. NEW YORK.

I. *Interest*.—The legal rate of interest in New York is SEVEN per cent., and no higher rate is allowed on special contracts.

II. *Penalty for Violation of the Usury Laws*.—Forfeiture of the contract in civil actions. In criminal actions, a fine not exceeding one thousand dollars; or imprisonment not exceeding six months; or both. All bonds, bills, notes, assurances, conveyances, all other contracts or securities whatsoever (except bottomry and *respondentia* bonds and contracts), and all deposits of goods, or other things whatsoever, whereupon or whereby there shall be reserved or taken, or secured, or agreed to be reserved or taken, any greater sum, or greater value for the loan or forbearance of any money, goods or other things in action than seven per cent. shall be void. (Rev. Stat. Vol. II., p. 182.) For the purpose of calculating interest, a month shall be considered the twelfth part of a year, and as consisting of thirty days; and interest for any number of days, less than a month, shall be estimated by the proportion which such number of days shall bear to thirty.

III. *Damages on Bills*.—The damages on bills of exchange, negotiated in New York and payable in other States, and returned under protest for non-acceptance or non-payment, are as follows:

- | | |
|---|-------------|
| 1. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, District of Columbia, and Ohio, | 3 per cent. |
| 2. North Carolina, South Carolina, Georgia, Kentucky, and Tennessee, | 5 " |
| 3. If drawn upon parties in any other State, | 10 " |

The following days, namely, the first day of January, commonly called New Year's day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas day; and any day appointed or recommended by the Governor of the State, or the President of the United States, as a day of fast or thanksgiving, shall, for all purposes whatsoever, as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, made after the passage of this act, be treated and considered as is the first day of the week, commonly called Sunday. (1849, ch. 261.)

IV. *Foreign Bills*.—The damages on foreign bills of exchange, returned under protest, are 10 per cent.

V. *Sight Bills*.—Grace is not allowed by the banks of the city of New York and of the interior, upon bills, drafts, checks, &c., payable at sight.

Sight Bills, Act of April, 1857.

SECTION 1. All bills of exchange or drafts drawn, payable at sight, at any place within this State, shall be deemed due and payable on presentation, without any days of grace being allowed thereon.

SEC. 2. All checks, bills of exchange, or drafts, appearing on their face to have been drawn upon any bank or upon any banking association or individual banker, carrying on banking business under the act to authorize the business of banking, which are on their face payable on any specified day, or in any number of days after the date or sight thereof, shall be deemed due and payable on the day mentioned for the payment of the same, without any days of grace being allowed, and it shall not be necessary to protest the same for non-acceptance.

SEC. 3. Whenever the residence or place of business of the endorser of a promissory note, or of the drawer or endorser of a check, draft, or bill of exchange, shall be in the city or town, or whenever the city or town indicated under the endorsement or signature of such endorser or drawer, as his or her place of residence, or whenever in the absence of such vindication, the city or town where such endorser or drawer, from the information obtained by diligent inquiry, is reputed to reside or have a place of business, shall be the same city or town where such promissory note, check, draft, or bill of exchange is payable or legally presented for payment or acceptance, all notices of non-payment and of non-acceptance of such promissory note, check, draft, or bill of exchange may be served by depositing them, with the postage thereon prepaid, in the post office of the city or town where such promissory note, check, draft, or bill of exchange was payable or legally presented for payment or acceptance, directed to the endorser or drawer at such city or town.

SEC. 4. This act shall take effect on the first day of July next, but shall not apply to any bills of exchange, checks, drafts, or promissory notes bearing date prior to that time.

NEW-JERSEY.

I. Interest.—The legal rate of interest in New-Jersey is six per cent., and no higher rate of interest is allowable on special contracts, except as provided in the following acts;

The legislature of New-Jersey passed the following special act in March, 1852, supplementary to an act against usury, approved April 10, 1846, the provisions of which act now apply, also, to the counties of Hudson, Bergen and Essex, and to the town of Paterson, in Passaic County:

Be it enacted, etc., That upon all contracts hereafter made in the city of Jersey City, and in the township of Hoboken, in the county of Hudson, in this State, for the loan of or forbearance, or giving day of payment, for any money, wares, merchandise, goods or chattels, it shall be lawful for any person to take the value of seven dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum, or for a longer or shorter period, any thing contained in the act, to which this is a supplement, to the contrary notwithstanding. *Provided,* such contract be made by and between persons actually located in either said city or township, or by persons not residing in this State.

April 6, 1855. The latter proviso was amended, "Provided the contracting parties, or either of them, reside in either of said places, or out of the State." The following changes have since been made so as to make it legal to charge 7 per cent. interest:

Act, February 21, 1860, Acquackanonk, Passaic County. Act, February 6, 1858, Bergen County. Act, February 18, 1858, Union County. Act, March 18, 1858, City of Rahway. Act, March 20, 1857, to all Savings Institutions in the State.

By act of March 28, 1862, the legislature authorized contracts at seven per cent. interest by parties residing in Middlesex County.

II. Penalty for Violation of the Usury Laws.—The contract is void, and the whole sum is forfeited.

III. Damages on Bills of Exchange.—There is no statute in force in reference to damages on bills of exchange.

IV. Foreign Bills.—There is likewise no statute in force in reference to damages on protested foreign bills of exchange.

V. Sight Bills.—Grace is allowed by law on drafts drawn "at sight," except those drawn upon banks which are payable on presentation.

Decisions.

When there have been partial payments, the interest must be calculated to the time of payment; then deduct the sum paid from the amount, and calculate the interest on the residue to the next payment. 1 Halsted R. 408.

1. Where a note is fairly executed, and without usury between the parties, the payee may sell it at any rate of discount he chooses, and the purchaser will have a right to recover the full amount of the note of any party, either maker or endorser, legally liable upon it. (*Court of Errors, June, 1858.*)

2. Promissory notes are personal chattels, and, like any other property, may be sold for what they will bring; but if a note is transferred by general endorsement as security for a loan obtained at a usurious rate of interest, the endorsee cannot enforce payment of the note.

3. Where usury is charged, the corrupt agreement to commit the offence must appear either by the facts of the case, or as a conclusion of law, from the facts.

LAWS OF NEW-JERSEY.

An Act relating to Commercial Paper.

1. *Be it enacted by the Senate and General Assembly of the State of New-Jersey,* That all bills of exchange or drafts drawn payable at sight, at any place within this State, other than those upon banks or banking associations, shall be deemed due and payable at the expiration of three days' grace, after the same shall be presented for acceptance.

2. *And be it enacted,* That all checks, bills of exchange or drafts, appearing upon their face to have been drawn upon any bank, or upon any banking association carrying on banking business under the acts to authorize the business of banking, which are on their face payable at sight, or on a specified day, or in any number of days after the date or sight thereof, shall be deemed due and payable on the day mentioned for the payment of the same, without any days of grace being allowed thereon.

3. *And be it enacted,* That whenever the residence or place of business of the endorser of a promissory note, or of the drawer or endorser of a check, draft or bill of exchange shall be in the city or township, or whenever the city or township indicated under the endorsement or signature of such endorser or drawer as his or her place of residence, or whenever, in the absence of such indication, the city or township where such endorser or drawer, from the best information obtained from diligent inquiry, is reputed to reside or have a place of business, shall be the same city or township where such promissory note, check, draft or bill of exchange is payable, or legally presented for payment or acceptance, all notices of non-payment and of non-acceptance of such promissory note, check, draft or bill of exchange may be served by depositing them, with the postage thereon pre-paid, in the post-office of the city or township where such promissory note, check, draft or bill of exchange was payable or legally presented for payment or acceptance, directed to the endorser or drawer at such city or township.

Approved March 13, 1862.

THE USURY LAWS IN SPAIN.—The clergy in Spain forbade the loan of money at interest. The monopoly of this branch of industry thus fell to the infidel's share, and was sold to the Jews. Thus the rate of interest varied not so much with the extortionate character of the reputed usurious Jews as with the Christian rapacity, which forbade the Christian laymen to commit damnable sin, and yet sold that damnation for large sums of money to the Jew. Towards the end of the thirteenth century, however, we find an instance of interest being legally recognised in Spain. The Cortez of Burgos drew up several articles, the substance of which was, that a Jew lending three pieces of coin might claim four in return; that when the accumulated interest should equal the capital, the debt should be cancelled; that a loan of any sum above eight *maravedis* must be made by and before a notary. Besides this there was a distraint on personal property, by the Alcalde, for debts unpaid; sale by auction of the debtor's goods; and "statute of limitations" operating after six years. The creditor, moreover, was bound to sue in his own person.—*Westminster Review*, January, 1864, p. 223.

IX. PENNSYLVANIA.

I. *Interest*.—The legal rate of interest in Pennsylvania is six per cent, except as provided in the following acts.

SEC. 1. *Be it enacted, etc.*, That commission merchants and agents of parties not residing in this commonwealth be, and they are hereby authorized to enter into an agreement to retain the balances of money in their hands, and pay for the same a rate of interest not exceeding seven per centum per annum, and receive a rate of interest, not exceeding that amount, for any advance of money made by them on goods or merchandise consigned to them for sale or disposal: *Provided*, that this act shall only apply to moneys received from or held on account of any advances made upon goods consigned from importers, manufacturers, and others, living and transacting business in places beyond the limits of the State. Act of 1857.

In investments by building associations, in loans to members thereof, the premium given for preference or priority of loan shall not be deemed usurious. Act of 8 May, 1855, § 1, P. L. 519.

Loans to railroads or canal companies, and bond taken for a larger sum than the amount of money advanced, not usurious. Act of July 26, 1842, § 11, P. L. 434.

II. There is now no penalty for usury in Pennsylvania, but the principal sum and legal interest can only be recovered. If a person voluntarily pays greater than legal interest, he may recover back the excess if sued for within six months. Act May 28th, 1858.

III. *Damages on Bills*.—The damages on bills of exchange negotiated in Pennsylvania, payable in other States, and returned under protest, are as follows (May 13, 1850):

1. Upper and Lower California, New Mexico, and Oregon, . . . 10 per cent.
2. All other States, 5 per cent.

IV. *Foreign Bills*.—The damages on foreign bills of exchange, returned under protest, are as follows (May 13, 1850):

1. Payable in China, India, or others parts of Asia, Africa, or islands in the Pacific Ocean, 20 per cent.
2. Mexico, Spanish Main, West Indies, or other Atlantic islands, East Coast of South America, Great Britain, or other parts of Europe . . 10 per cent.
3. West Coast of South America, 15 per cent.
4. All other parts of the world, 10 per cent.

V. *Sight Bills*.—By a law passed May 21, 1857, all drafts and bills of exchange, payable at sight, "shall be and become due on presentation, without grace; and shall and may, if dishonored, be protested on and immediately after such presentation.

Decisions.

A man may *bona-fide* purchase of a third person any security for the payment of money, at the lowest rate he can, without incurring the penalties of usury. 2 Dallas, 92.

Interest is a legal incident to every judgment. 4 Dallas, 252; 5 Watts, 464; 6 Watts, 53; 6 Binney, 437; 5 Wharton, 280; or decree of the Orphan's Court, 4 Harris, 151. Where a judgment is revived by *sci. fa.* the amount of principal and interest then due constitutes a new principal, and the plaintiff has a right to charge interest on the aggregate amount of principal and interest due at the time of rendering judgment on each *sci. fa.* 5 Sergeant & Rawle, 220; 5 Binney, 56; 5 Watts, 318.

X. DELAWARE.

I. *Interest*.—The legal rate of interest is six per cent., and no more is allowed on direct or indirect contracts.

II. *Penalty for Violation of the Usury Laws*.—Forfeiture of the money and other things lent, one half to the Governor for the support of government, the other half payable to the person suing for the same.

III. *Damages on Bills*.—There is no statute in force in Delaware in reference to damages on domestic or inland bills of exchange.

IV. *Foreign Bills*.—The damages upon bills of exchange drawn upon any person in England, or other parts of Europe, or beyond the seas, and returned under protest, are 20 per cent.

V. *Sight Bills*.—There is no statute with reference to bills, drafts, etc., *at sight*. They are not, by usage, entitled to grace.

Decisions.

Interest.—Seven per cent interest was allowed on a note drawn in New York. 1 Harring., 232. Interest on damages is discretionary with the jury. 1 Harring., 234, 449.

The principle of calculating interest and deducting payments on bonds, running accounts, and for and against administrators or guardians, is stated in 3 Harring., 469.

Interest is allowable on the ground of contract, or by custom (3 Harring., 528); but where there is no contract, usage, time fixed for payment, or account rendered, it is not usual to allow it. *Ibid*. It may be allowed on money due for work and labor. *Ibid*.

The sheriff held liable for interest on money levied by a sale of land from the time it was payable. 3 Harring., 25.

Bills or Notes.—A partial failure of the consideration of a bill of exchange can not be set up as a defence to an action on the bill; but a total failure may. 2 Harring., 32.

Fraud will vitiate the contract; and to show fraud, the worthlessness of the article bought may be proved in an action on a bill accepted for the price of it. *Ibid*.

Bank notes, though not money, have a certain legal character as money, and though not a legal tender they are a good tender unless objected to. 2 Harring., 235.

If at the time of the contract a bank-note be paid without indorsement, guarantee, or agreement, it is received as money, and the risk of the solvency of the bank is on the receiver. 2 Harring., 235.

Where a negotiable note is taken in the usual course of trade, before maturity, by an innocent party, *bona-fide*, and for a valuable consideration, without notice, neither fraud nor want of consideration, as between the original parties, can be set up as a defence against the indorsee. 3 Harring., 385. A party can not recover on an altered negotiable note without explaining the alteration. 3 Harring., 404. The payment of an antecedent debt is a good consideration for the assignment. *Ibid*.

Notice.—Notice of protest through the post-office is not sufficient if the indorser reside in the same town, unless there be a penny-post by which he is in the habit of receiving letters. 3 Harring., 419. The notice ought to be personal, or by writing left at the house or place of business. *Ibid*.

Demand.—If a note is payable at a certain place, demand at the place must be averred. 1 Harring., 10, 331. Demand must be made on the last day of grace. 1 Harring., 331.

A bank depositor must make an actual demand for his deposit before suit is brought. 1 Harring., 117, 496.

XI. MARYLAND.

I. *Interest*.—The revised constitution of Maryland provides that the rate of interest in the State shall not exceed six per cent. per annum, and no higher rate shall be taken or demanded. And the legislature shall provide by law all necessary forfeitures and penalties against usury.

II. *Penalties*.—Any person guilty of usury shall forfeit all the excess above the real sum or value of the goods or chattels actually lent or advanced and the legal interest on such sum or value, which forfeiture shall enure to the benefit of any defendant who shall plead usury, and prove the same. The plea must, however, state the sum or amount of the debt, and the plaintiff shall have judgment for that amount and legal interest only. Md. Code, Vol. 1, p. 697.

III. *Damages on Bills*.—The damages on bills of exchange negotiated in Maryland, payable in other States, and returned under protest, are uniformly 8 per cent. The claimant is entitled to receive a sum sufficient to buy another bill of the same tenor, and eight per cent. damages on the value of the principal sum mentioned in the bill, and interest from the time of protest, and costs. The protest of an inland bill must be made according to the law or usage of the State where it is payable. *Practice* includes the District of Columbia in this law of damages (Act of Assembly, 1785, ch. 38); but it is questionable whether the District be within the law, which provides only for *States*.

IV. *Foreign Bills*.—The damages on foreign bills of exchange returned under protest are 15 per cent. The claimant is to receive a sum sufficient to buy another bill of the same tenor, and 15 per cent. damages on the value of the principal sum mentioned in the bill, and interest from the time of protest, and costs.

IV. *Sight Bills*.—Grace is not allowed by the banks on bills, drafts, checks, etc., payable at sight.

Decisions.

1. Under the statute of Maryland of 1837, ch. 263, the certificate of a public notary is *prima facie* evidence of the presentment by him of an inland as well as a foreign bill of exchange or note, and of his protest of a bill for non-acceptance or non-payment, and also of the sending or delivery of notice in the manner stated in the protest. 1 Gill, 127. 2. If a party receive notice of the dishonor of a bill in due time, he can not object to the mode of conveyance. *Ibid.* 3. In Maryland, interest is not only given in all cases where it is in England, but in many others also. 2 Bland's C. R. 306. 4. It is not usurious in a bank to take interest in advance. 10 G. and J. R. 299.

5. Compound interest may be charged in three kinds of cases: first, where, with the knowledge and permission of the debtor, his whole debt, principal and interest, has been paid by a third person or his surety; secondly, where the holder of money has been directed or undertakes to invest money in his hands to make it productive, and fails or refuses to do so; and thirdly, where a trustee has received rents and profits, and retains and uses the money as his own, he will be charged with the profits or with interest, considering each year's interest as an addition to the capital sum. 2 Bland, 166.

XII. VIRGINIA.

I. *Interest*.—The legal rate of interest in Virginia is six per cent., and no higher rate is allowed on special contracts.

II. *Penalty for Violation of the Usury Laws*.—All contracts for a greater rate of interest than six per cent. per annum are void.

III. *Damages on Bills*.—The damages on bills of exchange negotiated in Virginia, payable in other States, and returned under protest, are uniformly 3 per cent.

IV. *Foreign Bills*.—The damages on foreign bills of exchange, returned under protest, are uniformly 10 per cent.

V. *Sight Bills*.—Grace is not allowed by statute or by usage on bills, etc., payable at sight.

Decisions.

A trustee accountable for rents and profits, is chargeable with interest thereon. 3 Grattan, 518.

It is not usurious for a bank to take interest for the first day on which a note is discounted, and also for the last day on which it is payable, inclusive. 5 Leigh, 251.

Where one resorts to equity for relief against usurious debt yet unpaid, he shall be required to pay only the principal advanced to him, without even lawful interest, according to the statute; yet where debtor seeks, in equity, an account of, and decree for, money already paid on usurious contract, the measure of relief is the excess paid above principal and lawful interest; and if his payments exceed principal and lawful interest, the surplus, with interest, shall be decreed to him. 1 Leigh, 147; 5 Leigh, 478; see also 1 Paige, 429.

What interest is allowable upon any contract, is always a question of law; and it is sometimes an intricate question as it respects the time or the place of the contract. 1 Rand. 35. And the court may instruct the jury with regard to the interest. 6 Call, 16.

Unsettled and disputed accounts ought not, in general, to bear interest. 1 Wash. 172; 2 Call, 366.

A legacy carries interest (no time for payment being specified) only from the end of the year after the death of the testator. 3 Munf. 10.

As to compound interest, etc., under what circumstances it may be taken. 4 Yates, 220-230.

The practice in Virginia is favorable to the recovery of interest; and it was held, in an action on a penal bill, payable on demand, not necessary to aver a special demand. An obligation to pay money on demand is evidence of a present debt, payable instant, and the writ a sufficient demand to entitle plaintiff to the penalty, and interest is allowed, not because of the forfeiture of the penalty, but because the debt was due and payable from the beginning. 6 Rand. 101.

Notary Public.—A certificate of a notary public, of a sister State, duly certified according to the usual notarial form, that a release was acknowledged by a party to be his act and deed, will not be received in evidence of the fact in the courts of Virginia. The deposition of the notary, or some equivalent testimony, should be produced. 1 Rand. 456.

Bills.—A protest of a foreign bill of exchange, in a foreign country, is proved by the notarial seal; but the protest is only *prima facie*, not conclusive evidence of the dishonor of the bill. 7 Leigh, 179.

It is not enough to charge the indorser on a bill of exchange, whereof the drawer has refused acceptance when presented, and payment when demanded, to prove protest for non-payment and due notice thereof to indorser; it is necessary to prove due notice to him of the dishonor of the bill by the non-acceptance. 2 Leigh, 321; 4 Wash. C. C. R. 467.

XIII. NORTH CAROLINA.

I. *Interest*.—The legal rate of interest in North Carolina is six per cent., and no higher rate is allowed on special contracts.

II. *Penalty for Violation of the Usury Laws*.—A forfeiture of the principal and interest; and if usurious interest is collected, a liability to pay double the amount of principal and interest paid—one half of the amount recovered for the use of the State, the other half for the claimant.

III. *Damages on Bills*.—The damages on bills of exchange negotiated in North Carolina, payable in other States, and returned under protest, are uniformly, 3 per cent.

IV. *Foreign Bills*.—The damages on foreign bills of exchange returned under protest are as follows :

1. Bills payable in any part of North America, except the Northwest Coast and the West Indies, 10 per cent
2. Bills payable in Madeira, the Canaries, the Azores, Cape de Verde Islands, Europe, and South America, 15 per cent.
3. Bills payable elsewhere 20 per cent.

V. *Sight Bills*.—By virtue of an act of the Legislature, passed in January, 1849, grace is allowed on bills *at sight*, unless there is a stipulation to the contrary. Prior to that date the usage was, not to allow grace on such bills.

Decisions.

I. *What Notes Negotiable*.—1. Bonds are negotiable, as well as promissory notes not under seal. Rev. Code ch. 13, sec.

2. A memorandum reciting the assignment of a note, and promising to pay on demand therefor a certain price, is a promissory note; and negotiable, and no proof of want of consideration can be admitted against an indorsee for value, before its dishonor. *Elliot v. Smithorman*, 2 D. & B. 338. But where there is no promise to pay money, 2 D. & B. 239; or where the promise is to pay money and do other things, 1 Jones, 357; or to pay in bank stock or any thing besides money, 2 D. & B. 513; or where the payment is contingent; it is not negotiable. 3 Hawkes, 458.

3. A promissory note payable to a blank or fictitious payee is negotiable, and may be indorsed in the name of the fictitious payee. *Elliot v. Smithorman*, 2 D. & B. 338. Otherwise of a bond. *Marsh v. Brooks*. 11 R. 409.

II. *Indorsement*.—1. An indorsement to enable an indorsee to sue in his own name must be of the whole not a part of the note. *Martin v. Hayes*. 1 Bus. 423.

2. Any holder may fill up a blank indorsement to himself. 1 R. 219; 4 R. 266. An executor may indorse a note payable to his testator. 1 Mur. 133.

3. The indorsee of a note or bill, for value or for a precedent debt, before it is due, and without notice, is unaffected by any equities between the other parties. *Reddich v. Jones*. 6 R. 107. *Turner v. Beggorly*. 11 R. 331; Bus. 40.

III. *Liabilities of Indorsers of Notes and Bonds*.—Indorsers of notes, bonds, and inland bills, are sureties for the maker. Rev. Code, ch. 13, § 10, and it is not necessary to charge them to prove any demand on maker or notice to indorser. *Williams v. Runi*, 3 D. & B. 74. But as to bills see *Hubbard v. Troy*, 2 R. 134. This act applies only when all the indorsements were made in this State. *Ingersoll v. Long*. 4 D. & B. 293. But in *Reddich v. Jones*, 6 R. 107, it was held to apply to an indorsement made in Virginia on a note made in N. Ca. And it applies where the note is made in Virginia and the indorsement in N. Ca. 1 R. 122.

XIV. SOUTH CAROLINA.

I. *Interest*.—The legal rate of interest in South Carolina is seven per cent., and no higher rate is allowed on special contracts.

II. *Penalty for Violation of the Usury Laws*.—Loss of all the interest taken.

III. *Damages on Bills*.—The damages on bills of exchange negotiated in South Carolina, payable in other States, and protested for non-payment, are uniformly 10 per cent. together with costs of protest.

A bill drawn in South Carolina, payable in another State, is deemed a foreign bill, and damages may be claimed, although such bill be not actually returned after protest.

IV. *Foreign Bills*.—The damages on foreign bills of exchange, negotiated in South Carolina, are as follows :

1. On bills on any part of North America, other than the United States and on the West Indies, 12½ per cent.
2. On bills drawn on any other part of the world, 15 per cent.

V. *Sight Bills*.—The statute of 1848 enacts that "bills of exchange, foreign or domestic, payable at sight, shall be entitled to the same days of grace as now allowed by law on bills of exchange payable on time."

By a statute passed in 1831, it is enacted that if money or other commodity be lent or advanced upon unlawful interest, the plaintiff shall be allowed to recover the amount or value actually lent, but without interest or cost.

By an act passed in 1839, it is enacted that a debtor by bond, note, or otherwise, about to leave the State, the debt not being yet due, may be sued and held to bail. The plaintiff must swear to the debt, and that he did not know the debtor meant to remove at the time the contract was made. But the writ must be made returnable to the term next succeeding the maturity of the note, etc.

Decisions.

Where a sealed note was given for the payment of \$2,500, three years after date, "with interest from the date, to be paid punctually at the end of each year," it was held, that the interest which fell due at the end of each of the three years, and remained unpaid, became principal also, and bore interest; but not so the annual interest which accrued afterwards, because there was no express or implied contract to that effect. 1 *Strobbart*, 115.

Where one contracts to pay a certain sum and interest on a certain day, the interest on that day becomes a part of the principal, and bears interest from that time. 3 *Richardson*, 125.

Judgments do not bear interest at common law. But in debt on a judgment, interest may be recovered by way of damages. 3 *Richardson*, 376. By act of the Legislature, all demands bearing interest before judgment, continue to bear interest after judgment recovered, till the judgment is paid.

Where the drawee of a bill, payable at sight, accepted it, "if presented at a particular time, he will be liable on it although not presented at that time." 3 *Rich*. 311.

XV. GEORGIA.

I. *Interest*.—The legal rate of interest in Georgia is SEVEN per cent., and no higher rate is allowed on special contracts. Open accounts, unliquidated, do not bear interest.

II. *Penalty for Violation of the Usury Laws*.—Forfeiture of only the excess of interest over seven per cent. Principal and legal interest are recoverable. (Acts of 1855-6, page 259.)

III. *Damages on Bills*.—The damages on bills of exchange, negotiated in Georgia, payable in other States, and returned under protest, are uniformly 5 per cent.

IV. *Foreign Bills*.—The damages on foreign bills of exchange, returned under protest, are 10 per cent.

V. *Sight Bills*.—"Three days, commonly called the three days of grace, shall not be allowed upon any sight drafts or bills of exchange drawn payable at sight, after the passage of this act; but the same shall be payable on presentation thereof, subject to the provisions of the first section of this act. The first section designates the HOLIDAYS."—Act passed Feb. 8, 1850. [See Cobb's New Digest of the Laws of Georgia, pp. 519-522.]

VI. *Endorsers*.—Endorsers are not entitled to notice of dishonor, except upon notes and bills payable at bank, or negotiated in bank, or placed in bank for collection.

Decisions in Georgia.

1. The endorsee of a negotiable promissory note, drawn in Georgia, payable in New York, and returned protested for non-payment, is entitled to charge five per cent. damages against the indorser, as provided by the act of 1823, in cases of protested bills of exchange. *Howard v. Central Bank*, 3 Kelly's Reports, 374. 2. A note for valuable consideration, transferred before due, and without notice of any equities, as collateral security for an existing debt, is not liable, in the hands of the transferee, to any of the equities between the maker and the payee. *Gibson v. Conner*, *Ib.* 47.

3. *Bills and Notes*.—The holder of a bill may, in default of payment, sue all the parties liable thereon at the same time, and may maintain an action against the drawer without previously suing the acceptor. 1 R. M. Charlk. 53.

4. The Georgia statute of 1799, in making promissory notes negotiable, whether given for money or other things, *ipso facto* made them exempt from the necessity of proving consideration. *Dudley*, Geo. 157.

5. Failure of consideration is no defence to an action by a *bona-fide* holder without notice, unless the note is transferred after due. Geo. Decis. Part II. 163.

6. *Usury*.—Usury may be set up in defence to a proceeding to foreclose a mortgage. 1 Kelly, 392.

7. Where a surety on a debt tainted with usury pays the same, knowing the debt to be usurious, he can not recover the amount paid from the principal. But he may recover it back from the creditor. 1 Kelly, 140; 3 Kelly, 162.

8. The maker of a usurious note is a competent witness for the defendant to prove usury, in an action by an endorsee against an endorser, on being released. Renewals of a usurious contract carry the taint of usury with them. 1 Kelly, 108.

9. A note, void as being given in direct violation of statute, is valid against the maker in the hands of an innocent endorsee, and the original consideration can not be inquired into. *Dudley*, Geo. 249.

XVI. ALABAMA.

I. *Interest*.—The rate of interest in Alabama is eight per cent. per annum.

II. *Penalty for Violation of the Usury Laws*.—All contracts made at a higher rate of interest than eight per cent. are usurious, and can not be enforced except as to the principal.

III. *Damages on Bills*.—Damages on inland bills of exchange protested for non-payment, are 5 per cent.; on foreign bills of exchange 10 per cent. on the sum drawn for.

IV. All bills drawn and payable within this State are termed inland bills; those drawn in this State and payable elsewhere, are considered foreign bills.

V. *Sight Bills*.—Grace is allowed on bills, drafts, etc., payable at sight.

Decisions.

Usury.—The offence of usury is not complete, so as to enable a common informer to sue for the penalty given by the statute of Alabama of 1819, until the money, etc., has been taken, accepted, or received. 4 Alabama, 124.

The statutes of usury confer a personal privilege upon the borrower, which he may waive, and if he does no third party can take advantage. 3 Alabama, 643.

Interest.—In Alabama, interest will be allowed as well upon debts contracted abroad, if the *lex loci contractus* authorizes it, as in the State. 7 Port. 110.

A note discounted by the Bank of Mobile carries the legal rate of interest, eight per cent., after its maturity. 7 Alabama, 490.

Where a partial payment is made and indorsed upon a promissory note before maturity, interest will not run upon the payment up to the maturity of the note, without a special agreement, express or implied. 7 Alabama, 359.

Bills and Notes.—The statutes of Alabama require the negotiability and character of bills of exchange, foreign and inland, and promissory notes, payable in bank, to be governed by the general commercial law. 4 Howard's U. S. R. 404.

It is incumbent on an indorser of negotiable paper, if he would prevent usury from being set up against him, to show that he became the innocent holder of the paper for a valuable consideration, before its maturity. 9 Port. 9.

Successive accommodation indorsers of a bill are not co-sureties, in the absence of any agreement to that effect, and any circumstance raising such presumption. 5 Alabama, 683.

An indorser of a bill of exchange is not discharged by the mere forbearance of the holder to sue the acceptor for any length of time. 8 Port. 108.

A promise, in writing, to accept a bill of exchange not *in esse*, is in law a sufficient acceptance, if the bill be taken on the faith of such promise; and a collateral written or mere verbal promise to accept it, made after it was drawn, may also amount to an acceptance. But a mere verbal promise to accept a bill of exchange not yet drawn is not such an acceptance as will in law bind the acceptor, even if made to the person in whose favor it is drawn. 8 Port. 263.

Where a bill is made payable at a particular place, presentment for payment at that place is sufficient to hold the indorser. 9 Port. 186.

Where the holder of a bill of exchange and the parties sought to be charged upon its dishonor reside in different towns, notice of non-payment may be given through the post-office, although the agent of the holder and the party to be notified resides in the same town. 8 Alabama, 824.

In Alabama, damages other than interest can not be recovered of an acceptor of a bill, as acceptor merely. 8 Port. 539.

XVII. ARKANSAS.

I. *Interest*.—The legal rate of interest in Arkansas is six per cent. Special contracts in writing will admit an interest not to exceed ten per cent. All judgments or decrees upon contracts bearing more than six per cent. shall bear the same rate of interest originally agreed upon. (*Gould's Digest*, chap. 92, §§ 1, 2, etc., 1858.)

II. *Penalty for Violation of the Usury Laws*.—All contracts for reservation of a greater rate of interest than ten per cent. are void. The excess taken or charged beyond ten per cent. may be recovered back, provided the action for recovery shall be brought within one year after payment. (*Ib.* secs. 6 and 7.)

III. *Damages on Bills*.—The damages on bills of exchange drawn or negotiated in Arkansas, expressed to be *for value received*, and protested for *non-acceptance*, or for *non-payment* after non-acceptance, are as follow: (*Ib.* chap. 25 :)

1. If payable within the State,..... 2 per cent.
2. If payable in Alabama, Louisiana, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois or Missouri, or at any point on the Ohio River,..... 4 per cent.
3. If payable in any other State or territory,..... 5 per cent.
4. If payable within either of the United States, and protested for non-payment, *after acceptance*,..... 6 per cent.

IV. *Foreign Bills*.—The damages on bills of exchange, expressed *for value received*, and payable beyond the limits of the United States, (*Ib.* chap. 25,) are..... 10 per cent.

V. *Sight Bills*.—There is no statute in force in Arkansas in reference to grace on sight bills. Section 15, *Gould's Digest*, says, "Foreign and inland bills shall be governed by the law-merchant as to *days of grace, protest and notices*."

Decisions and Statutes.

Protest.—The protest made by the notary public, under his hand and seal of office shall be allowed as evidence of the facts therein contained. *Digest*, 1848, p. 217. But the certificate of a notary who protested a bill, though under his notarial seal, is no evidence of the fact. *REAL ESTATE BANK vs. BIZZELL*, 4 Ark. 189.

The certificate of a notary public, under his hand and seal of office, that he forwarded notice of protest, shall be *prima facie* evidence of the fact therein stated. Act 21 February, 1859.

Interest.—Where a note is given, bearing interest at the rate of ten per cent. per annum, the payment of the interest as well as the principal must be negatived in the breach, or it will be too narrow. 3 Pike's Arkansas R. 261.

In Arkansas, a promissory note, payable on demand, draws interest from date, without a demand. 4 Pike, 210.

Where there is a legal liability to pay interest on a money bond or note, by the non-payment thereof according to its tenor, such liability need not be alleged in an action on the bond or note. 2 Pike, 375.

The fourth section of ch. 80 of the Revised Statutes of Arkansas, which provides that judgments shall bear the same rate of interest as the contract upon which they are recovered, gives such rate of interest upon the damages recovered as well as upon the original debt. 4 Pike, 150.

In an action upon a note bearing interest at a rate greater than is allowed by law, except on special agreement, it is necessary to allege that the interest as well as the principal has not been paid. 3 Pike, 261.

XVIII. CALIFORNIA.

I. Interest.—The legal rate of interest in California is, by statute, fixed at **TEN** per cent. On special contracts any rate of interest may be agreed upon or paid.

II. Penalty for Violation of the Interest Law.—There is no law in California fixing any penalty for charging any rate of interest above ten per cent. The matter is thus left entirely free between the contracting parties.

III. Damages on Bills.—The damages on bills of exchange drawn or negotiated in California, payable in any State east of the Rocky Mountains, and returned under protest for *non-acceptance* or *non-payment*, are uniformly 15 per cent.

IV. Foreign Bills.—The damages on foreign bills of exchange returned under protest, are 20 per cent.

V. Sight Bills.—Grace is not allowed by the bankers on bills, checks, drafts, etc., payable *at sight*. The notarial fees for protesting a bill of exchange or promissory note are \$5 or more, according to the number of notices sent. Act March 13, 1850.

Statutes.

Interest.—**SEC. 1.** When there is no express contract in writing, fixing a different rate of interest, interest shall be allowed at the rate of ten per cent. per annum, for all monies after they become due on any bond, bill, promissory note, or other instrument of writing, on any judgment, recovered before any court in this State for money lent, for money due on the settlement of accounts, from the day on which the balance is ascertained for money received to the use of another.

SEC. 2. Parties may agree in writing for the payment of any rate of interest whatever on money due, or become due, on any contract. Any judgment rendered on such contract shall conform thereto, and shall bear the interest agreed upon by the parties, and which shall be specified in the judgments.

SEC. 3. The parties may agree, on any contract in writing whereby any debt is secured to be paid, that if the interest on such debt is not punctually paid, it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Bills of Exchange.—By the statute of April 16, 1850, it is provided that no acceptance of a bill of exchange shall be valid unless such acceptance be in writing; and if the acceptance be on a paper other than the bill, it shall not bind the acceptor, except in favor of a person to whom the acceptance shall have been shown, and who shall purchase the bill for a valuable consideration.

SEC. 18. In all cases where a notice of non-acceptance of a bill of exchange or non-payment of a bill of exchange, promissory note, or other negotiable instrument, may be given by sending the same by mail it shall be sufficient if such notice be directed to the city or town where the person sought to be charged by such notice resides at the time of drawing, making, or indorsing such bill of exchange, promissory note, or other negotiable instrument, unless such person at the time of affixing his signature to such bill, or note, or negotiable instrument, shall, in addition hereto, specify thereon the post-office to which he may require the notice to be addressed.

XIX. FLORIDA.

I. Interest.—The legal rate of interest is six per cent. On special contracts eight per cent. may be charged.

II. Penalty for Violation of the Usury Laws.—Forfeiture of the whole interest paid.

III. Damages on Bills.—The damages on bills of exchange, negotiated in Florida, payable in other States, and returned under protest for non-payment, are uniformly 5 per cent.

IV. Foreign Bills.—Damages on foreign bills of exchange 5 per cent.

V. Sight Bills.—Grace is not allowed on bills, drafts, etc., payable at sight. There is no statute in Florida upon this subject.

Decisions.

Usury.—In Florida, where illegal interest is reserved in a contract, it is void to the extent of the whole interest reserved, including as well legal as illegal interest. 1 Branch's Reports, 356.

A contract not usurious is not invalidated by a subsequent receipt of a contract for illegal interest. But where a usurious contract is substituted for one not usurious, in an action on the substituted contract, the plaintiff will be entitled to recover only according to the terms of the original contract. *Ibid.*

In respect of usury, a contract is to have effect according to the law at the time when it is made. *Ibid.*

Where a usurious contract is made void by statute at the time it is entered into, a subsequent repeal of the statute does not make the contract valid. *Ibid.*

The actual receipt of illegal interest is necessary to subject one to the penalty for usury under the statute of Florida. *Ibid.*

A contract to pay more than legal interest for past forbearance is usurious. *Ibid.*

Notes.—It seems that notice of protest to an indorser would be good if it be sufficient to put the party on inquiry, and prepare him to pay it or to defend himself. Even if there be some uncertainty in the description of the bill or note, if it does not tend to mislead the party, it will be good. 1 Branch, 301.

The original protest of demand and non-payment of a note made by a notary, where the notary testifies that it was made at the time of the demand of payment, and that he believes the facts stated therein are true, and have occurred, is admissible in evidence, although the notary does not remember any of the facts stated therein, independently of the protest. *Ibid.*

A part payment of a note by the indorser, not explained or qualified by any accompanying circumstances, will be held sufficient evidence of waiver of notice. But where the payment is made with the money of the maker, and by his request, the indorser acts as mere agent of the maker, and the transaction is so qualified and explained as to preclude all idea of an actual or intended waiver on the part of the indorser. 1 Branch, 25.

A plea filed under oath, in accordance with the Florida statutes, alleging the failure or want of consideration of a bond, note, or other instrument of writing, throws the *onus* of proving the consideration of the instrument sued on upon the plaintiff; but the consideration can be inquired into only between such parties as it might have been at common law. 1 Branch, 94. As between the indorsee and the maker, the consideration can not be inquired into. *Ibid.*

A note in the words, "On demand, the first day of January next, I promise," etc., is payable on demand, and the clause, "the first day of January," applies only to the time when interest was to commence. 1 Branch, 447.

XX. ILLINOIS.

I. *Interest*.—The legislature, in 1857, passed the following act:

SECTION 1. That from and after the passage of this act, the rate of interest upon all contracts and agreements, written or verbal, express or implied, for the payment of money, shall be six per cent. per annum upon every one hundred dollars, unless otherwise provided by law.

SECTION 2. That in all contracts hereafter to be made, whether written or verbal, it shall be lawful for the parties to stipulate or agree that ten per cent. per annum, or any less sum of interest, shall be taken and paid upon every one hundred dollars of money loaned, or in any manner due and owing from any person or corporation to any person or corporation in this State.

II. *Penalty for Violation of the Usury Laws*.—If any person or corporation in this State shall contract to receive a greater rate of interest than ten per cent. upon any contract, verbal or written, such person or corporation shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation. (Act of 1857.)

III. *Damages on Bills*.—The damages on bills of exchange negotiated in Illinois, payable in other States or Territories, and returned under protest for non-payment, are uniformly (*by act of March 3, 1845*) 5 per cent. in addition to the interest.

IV. *Foreign Bills*.—The damages payable on foreign bills of exchange, returned under protest, are (*by act of March 3, 1845*) 10 per cent. in addition to the interest.

V. *Sight Bills*.—Heretofore there has been no statute in force regarding bills or drafts at sight, but by an act of the legislature, approved February 22d, 1861, it is enacted that "no note, check, draft, bill of exchange, order or other negotiable or commercial investments payable at sight or on demand, or on presentation, shall be entitled to days of grace, but shall be absolutely payable on presentment. All other notes, drafts or bills of exchange, shall be entitled to the usual days of grace."

This act is in force from its passage.

Decisions and Statute.

Bills of Exchange.—In addition to the damages on bills of exchange allowed by the act of March 3, 1845, six per cent. interest is payable from the maturity of such bills, together with cost and charges of protest; provided the bill expresses *for value received*.

A note and agreement, made at the same time, must be taken together as forming one entire contract. 3 Scammon, 72.

Although no particular form is necessary to make a note, yet the writing must show an undertaking or engagement to pay, and to a person named in it, or to bearer or holder of the instrument. Breece's Rep. 2.

The legal effect of a bond or note payable on or before the day, is different from one payable on the day—in the one case the obligor having the right to pay before the day, but not in the other, 2 McLean, 402.

By the rule of the common law, a note under seal imports a valuable consideration, and no inquiry could be had in relation thereto. So a note not under seal, expressing on its face to have been given for value received, imports a sufficient consideration, and leaves it open to be impeached by the defendant. 1 Scam. 208.

Interest.—Held, that when judgment is obtained upon a contract, that contract ceases to be, and is merged in the judgment, and such judgment, as regards the interest, is operated upon and controlled, not by the contract, but by the statute. Breece, 52.

INDIANA.

I. *Interest*.—The legal interest in Indiana is six per cent., which may be taken in advance, if so expressly agreed.

II.—*Penalty for Violation of the Usury Laws*.—If a greater rate of interest than as above shall be contracted for, received or reserved, the contract shall not, therefore, be void; but if it is proved in any action that a greater rate than six per cent. per annum has been contracted for, the plaintiff shall only recover his principal, with six per cent. interest and costs; and if the defendant has paid thereon over six per cent. interest, such excess of interest shall be deducted from the plaintiff's recovery.

III.—If, in any action for recovery of a debt, it is proved that previous to the commencement of the suit the defendant has tendered the amount due, with legal interest, the defendant shall recover costs, and the plaintiff shall only recover the amount tendered.

IV. *Damages on Bills*.—Damages, payable on protest for non-payment or non-acceptance of a bill of exchange, drawn or negotiated within the State of Indiana, if drawn upon any person at any place out of this State, are 5 per cent. Beyond such damages no interest or charges accruing prior to protest shall be allowed, and the rate of exchange shall not be taken into account.

V. *Foreign Bills*.—The damages payable on protest for non-payment or non-acceptance of a bill of exchange, drawn on any place not in the United States, are, on the principal of such bill, 10 per cent. No damages beyond the cost of protest are chargeable against the drawer or the endorser of either species of bill, if, upon notice of protest and demand of the principal sum, the same is paid.

VI. *Sight Bills*.—Grace is allowed on all bills of exchange payable in Indiana, whether sight or time bills.

Decisions.

1. A clause in the charter of a corporation authorizing the company to borrow money "on such terms as might be agreed upon between the parties," empowers them to borrow at a rate of interest beyond that established by the general law. *Morrison vs The Eaton, &c., Rail-Road Company*, 14 Tanner's (Indiana) Reports, 110.

2. A tender of the simple value of a specific article, after failure to deliver, is not sufficient; interest to the time of the tender should be included. *Hamar vs. Dimmick*, 4 Tanner's (Indiana) Reports, 105.

3. The reservation of ten per cent. interest on the bonds, being valid and not usurious by the laws of Ohio, the guaranty of A. was also valid; and the agreement sued on being merely substituted as a security, was not tainted with usury. In reality, the instrument sued on amounts only to an agreement to pay a given sum of money, being the amount of the principal and interest of the bonds. 14 Tanner's Reports, 15.

4. A plea of usury must specify the particulars of the contract upon which the usurious interest is alleged to have been taken or reserved. *Engler et al. vs. Collins*, 16 Harrison's (Indiana) Reports, 189.

5. A plea of usury, which purports to answer the whole cause of action, when the facts pleaded are a bar to a part only of the claim, is bad on demurrer. *Moorman et al. vs. Barton*, 16 Harrison's (Indiana) Reports, 206.

6. An agreement to extend the time of payment of a promissory note, in consideration of usurious interest, is not binding, and will not discharge a surety. *Brown vs. Harness*, 16 Harrison's (Indiana) Reports, 248.

XXII. IOWA.

I. *Interest*.—The legal rate of interest in Iowa is six per cent. Ten per cent. may be charged on special contracts. On judgments, interest is chargeable as on the contract.

II. *Penalty for Violation of the Usury Laws*.—Forfeiture of the excess of interest paid, for the benefit of the School Fund. The borrower is by law a competent witness to prove usury.

III. *Damages on Bills*.—The rates of damages allowed on non-acceptance or non-payment of bills drawn or indorsed in this State, are as follows: If drawn upon a person at a place out of the United States, or in California, or in the Territories of Oregon, Utah, or New Mexico, ten per cent. upon principal, expressed in the bill, with interest from time of protest. If drawn upon a person at a place in Iowa, Missouri, Illinois, Wisconsin, or in Minnesota, three per cent., with interest. If upon a person at a place in Arkansas, Louisiana, Mississippi, Tennessee, Kentucky, Indiana, Ohio, Virginia, District of Columbia, Pennsylvania, Maryland, New Jersey, New York, Massachusetts, Rhode Island, or Connecticut, five per cent., with interest. If drawn upon a person at a place in any other State, 8 per cent., with interest. (Code, §965.)

IV. *Sight Bills*.—Grace is allowed on bills and notes, according to principles of the law merchant, and notice to indorsers, etc., according to the rules of the commercial law. (Laws, 1852-3.)

Decisions.

Bills of Exchange and Notes.—A person can not be rendered liable on a bill of exchange or promissory note, unless his name, or the style of the firm of which he is a member, is attached to some portion of it as a party. 1 Green's Iowa R., 231.

A bill of exchange drawn in one State upon a person residing in another State is treated as a foreign bill. 1 Iowa, 388.

When no time of payment is mentioned in a note, it is in contemplation of law payable on demand. 1 Iowa, 552.

The *lex loci contractus* will govern the liability of indorsers, and it will be presumed that the *lex mercatoria* prevails in those States, rendering the indorsers liable on demand and notice, without suit against the makers. 1 Iowa, 388.

Where a lost promissory note, which was made payable to bearer, is the ground of an action in chancery, to enable the complainant to recover, he must indemnify the defendant by bond and security against all claims on the note; such indemnity may be required by decree of the court, and the complainant authorized to recover on compliance therewith, and on payment of costs. 1 Iowa, 48.

Where a person, not a party, writes his name on the back of a negotiable promissory note, the law presumes that he is a strictly commercial indorser, even when his indorsement can not be made operative without the aid of another. 1 Iowa, 331.

Interest.—By a provision of statute, an account bears interest from the time of its liquidation; and that will be presumed from the day the account was presented for payment, if no objection is made to its correctness. 1 Iowa, 336.

In order to recover interest on an account, it should be averred in the declaration and specified in the bill of particulars. Ibid.

Under the statute authorizing parties to contract for interest not exceeding twenty per cent. per annum, it was legal to make a note drawing twelve per cent., and if not paid when due, fifteen per cent. It will not be considered by a court of equity as a contract for penalty, but for interest after a given day. 1 Iowa, 180.

XXIII. KENTUCKY.

I. *Interest*.—The legal rate of interest in Kentucky is six per cent. No higher rate of interest is allowed even on special contracts. All contracts made, directly or indirectly, for the loan, or forbearance of money, or other thing, at a greater rate than legal interest (6 per cent per annum,) shall be void for the excess of legal interest.

II. *Penalty for Violation of the Usury Laws*.—If any discount or interest greater than the legal interest or discount is taken by any bank, or other corporation, authorized to loan money, the whole contract for interest shall be void, and any thing paid thereon for interest may be recovered back by the person paying the same; or any creditor of his may recover the same by bill in equity.

Banks, or other monied corporations, or individuals, are not prevented, in discounting bills of exchange, from taking a fair rate of exchange between the place where it is bought and the place where it is payable, in addition to the discount for interest. But such privilege of buying bills of exchange at less than par value, shall not be used to disguise a loan of money at a greater rate of discount than the legal interest or discount.

III. *Damages on Bills*.—No statute is in force in Kentucky upon the subject of damages on inland bills of exchange.

IV. *Foreign Bills*.—Where any bill of exchange, drawn on any person out of the United States, shall be protested for non-payment or non-acceptance, it shall bear ten per cent. per year interest from the day of protest, for not longer than eighteen months, unless payment be sooner demanded from the party to be charged. Such interest shall be recovered up to the time of the judgment, and the judgment shall bear legal interest thereafter. Damages on all other bills are disallowed. (Revised Statutes, pages 193 and 194.)

V. *Sight Bills*.—Grace is allowed, by some banks, on bills, drafts, etc., payable at sight, but the point is not yet fully settled in this State.

Decisions.

1. Partial payment on a debt bearing interest shall be first applied to the extinguishment of the interest then due.

2. The notarial protest, under the notarial seal, of the non-acceptance or non-payment of a foreign bill, shall be evidence of its dishonor; but the protest may be disproved.

3. A suit may be maintained against all, or some, or any of the parties to a bill of exchange; and a failure of proof as to one or more defendants can not prevent judgment against the others or either of them.

4. Where a bill is payable to the drawer's order, and endorsed to his agent, the endorsement is virtually to himself, and no averment of his having paid it is necessary. 8 Dana, 133.

5. In an action upon a foreign bill, the protest is competent evidence to prove presentment of the bill to the acceptor, and non-payment. 3 B. Monroe, 10.

6. Protest of a foreign bill is necessary to a recovery thereon against the drawer or endorsers; and in Kentucky the demand and noting for protest must be made by the notary himself; it is not sufficient that this was done by his clerk, unless it appear that such delegation of authority is sanctioned by the custom of the place where the presentment was made. 6 B. Monroe, 60.

XXIV. LOUISIANA.

1. *Interest*.—1. All debts shall bear interest at the rate of *FIVE* per cent. from the time they become due, unless otherwise stipulated. (Act March 15, 1855.)

2. Conventional interest not exceeding eight per cent. per annum may be contracted for. *Ibid*.

3. The owner of any promissory note, bond, or written obligation, for the payment of money to order or to bearer, or transferable by assignment, shall have the right to collect the whole amount of such promissory note, bond, or written obligation, notwithstanding such promissory note, bond, or written obligation may include a greater rate of interest or discount than eight per cent. interest per annum. Provided that such obligations shall not bear more than eight per cent. interest per annum after their maturity until paid. (Act of March 2d, 1860.)

II. *Damages on Bills*.—The damages on bills of exchange, negotiated in Louisiana, payable in other States, are uniformly 5 per cent.

III. *Foreign Bills*.—The damages on foreign bills of exchange, returned under protest, are uniformly (Statute of 1838) . 10 per cent.

IV. *Sight Bills*.—There is no statute upon this subject in Louisiana. A decision has been made in one of the inferior courts allowing three days' grace on sight bills, but the usage is to pay on presentation.

Decisions.

By the laws of Louisiana, a notary is required to record, in a book kept for that purpose, all protests of bills made by him, and the notices given to the drawers or indorsers, a certified copy of which record is made evidence. 5 Howard's U. S. R. 53.

Under these laws, therefore, a deposition of the notary, giving a copy of the original bill, and a copy of his record, stating a demand of payment, subsequent protest, and notice to the drawers and indorsers respectively, is good evidence. *Ib*.

Where a bank in which a note has been deposited for collection places it, in case of non-payment, in the hands of the notary to whom its own business is uniformly intrusted, to be protested, it will not be responsible for the failure of the notary to protest the note, or to notify the proper parties, having shown the same care and attention in the management of the business intrusted to it which men of common prudence bestow on their own affairs. *Baldwin v. Bank of Louisiana*, Supreme Court, La., 1846.

If the principal be sued for and recovered, the interest can not be afterwards claimed in a separate suit. 2 Martin's R. 83.

Interest on interest can not be allowed. 5 Louisiana R. 33.

Interest can not be allowed on an unliquidated claim, and a claim is unliquidated when no act of one of the parties alone can render it certain. 5 Martin's R. 6; 1 Martin's New Series, 130; 6 *ib*. 715, 10; 7 Louisiana R. 599, 134.

A parol agreement to pay conventional interest is not void; parol proof can not be offered to prove such a convention; but if a party, when interrogated, confess that he did make such a convention, it will bind him. 6 Martin's R. 279.

Interest must be allowed on bills of exchange and promissory notes from the date of protest. 6 Martin's New Series, 572.

All debts now bear interest from *maturity*. Acts of 1852, p. 95.

Banks can not in any case take more interest than at the rate fixed by their charters. Where the bank-charter fixes the rate of interest at nine per cent., and ten is agreed upon, it will be reduced to the rate fixed by the charter. 8 Louisiana R. 261.

XXV. MICHIGAN.

I. *Interest*.—The legal rate of interest in Michigan is seven per cent. But it is lawful for parties to stipulate *in writing* for any sum not exceeding ten per cent.

II. *Penalty for Violation of the Usury Laws*.—Parties suing upon contracts reserving over ten per cent. interest, may recover judgment for the principal and legal rate of interest. There is no provision for recovering back illegal interest paid, and no penalty for receiving it. *Bona-fide* holders of usurious negotiable paper taken before maturity, without notice of usury, may recover the full amount of its face.

III. *Damages on Bills*.—Damages on bills drawn or negotiated in Michigan and payable elsewhere and protested are as follows :

1. If payable out of the United States, 5 per cent.
2. If payable in Wisconsin, Illinois, Indiana, Ohio, Pennsylvania, or New York, 3 per cent.
3. If payable in Missouri, Kentucky, New England, New Jersey, Delaware, Maryland, Virginia, or District of Columbia, 5 per cent.
4. If payable in any other State or Territory, 10 per cent.

IV. *Sight Bills*.—Grace is allowed on all paper not payable on demand.

Decisions.

The following instrument is not a promissory note :

[§60.]

PLYMOUTH, July 11, 1841.

"Two years from date, for value received, we, or either of us, promise to pay E. W., or bearer, sixty dollars with use. Said W. agrees that if fifty dollars be paid on the 1st day of January, 1843, it shall cancel this note." Signed by the makers. *Froleck et al. vs. Norton et al.*, 2 Mich. Rep. (Gibbs).

The law of the place where a promissory note is made payable, determines the time and mode of presentment and of proceedings upon non-payment, but notice to the indorser must be according to the law of the place where the indorsement was made. *Snow vs. Perkins*, 2 Mich. Rep. (Gibbs), p. 238.

When the law of a State in which a promissory note is made payable, authorizes its protest for non-payment, notice to the indorser residing in another State in which the indorsement was made, that it has been protested for non-payment and that the holder looks to him for payment, is a sufficient notice of presentment and non-payment to charge him as indorser. *Snow vs. Perkins*. Ibid.

The case of *Platt vs. Drake* (1 Doug. Mich. Rep.), noticed and commented upon.

A mistake in describing a promissory note in a notice of protest, as in amount, etc., does not necessarily vitiate the notice; the question in such case being whether or no the indorser was misled by the mistake. Ibid.

The object of a notice of protest of a promissory note is to inform the indorser of the non-payment of it by the maker, and that the indorser is liable for the payment of it; and if the notice accomplishes this object it is sufficient, although it misdescribes the note in some particulars. Ibid.

A draft made payable to the bearer, no payee being named therein, is, nevertheless, an order for money in the meaning of the Revised Statutes of Michigan. *People vs. Brigham*, 2 Mich. Rep.

MINNESOTA.

I. *Interest.*—Interest for any legal indebtedness shall be at the rate of \$7 for \$100 for a year, unless a different rate be contracted for in writing, but no agreement or contract for a greater rate of interest than \$12 for every \$100 for a year shall be valid for the excess of interest over twelve per cent.; and all agreements and contracts shall bear the same rate of interest after they become due as before, if the rate be clearly expressed therein. *Provided*, the same shall not exceed twelve per cent. per annum.

All judgments or decrees, made by any court in this State, shall draw interest at the rate of six (6) per cent. per annum. (Laws of 1860, p. 226.)

II. *Penalty for Violation of Interest Law.*—Excess of interest over 12 per cent. forfeited.

III. *Days of Grace.*—On all bills of exchange payable at sight, or at future day certain within this State, and on all negotiable promissory notes, orders and drafts, payable at a future day certain within this State, in which there is not an express stipulation to the contrary.

IV. *When Grace not allowed.*—On bills of exchange, note or draft, payable on demand.

V. *When Presented for Payment, &c.*—Bills of exchange, bank checks and promissory notes falling due, or the presentment for acceptance or payment whereof should be made on the 1st day of January, the 4th day of July, the 25th day of December, the 22d day of February, and every day appointed by the President of the United States or the Governor of the State as a day of fasting or thanksgiving, shall be presented for acceptance or payment on the day *preceding*. Such days (above enumerated) shall be treated and considered as the first day of the week, commonly called Sunday. (Col. Laws, p. 376.)

VI. *Acceptance of Bills of Exchange.*—No person within this State shall be charged as an acceptor on a bill of exchange, unless his acceptance shall be in writing, signed by himself or his lawful agent.

VII. *Damages on Bills of Exchange.*—On any bill of exchange drawn or endorsed within this State, and payable without the limits of the United States, which shall be duly protested for non-acceptance or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange, at the time of the demand, and damages at the rate of ten per cent. upon the contents thereof, together with interest on said contents to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

On all bills drawn on any person, body politic or corporation out of this State, but within some State or Territory of the United States, and protested for non-acceptance or non-payment, five per cent. damages and interest, and cost and charges of protest.

MISSOURI.

I. Interest.—The legal rate of interest in Missouri is six per cent. when no other rate is agreed upon. Parties may agree in writing for any larger rate, not exceeding ten per cent. Parties may so contract as to compound the interest annually.

II. Penalty for Violation of the Usury Laws.—Forfeiture of the entire interest; but judgment to be rendered for the principal with ten per cent. interest, the interest to be appropriated to the school fund.

III. The damages allowed on bills of exchange payable in other States or Territories of the United States returned under protest, are uniformly.....10 per cent.
On bills of exchange payable within the State,..... 4 per cent.
On negotiable notes, if actually negotiated,..... 4 per cent.

In these last two cases no damages can be recovered, if payment is made or tendered within twenty days after demand or notice of dishonor.

IV.—Foreign Bills.—The damages allowed on foreign bills of exchange, protested for non-payment, are.....20 per cent.

The damages allowed in all of the above cases are in lieu of interest, charges of protest and other expenses incurred previous to or at the time of giving notice of dishonor, or maturity of note or bill when notice is required; but after protest the interest will be allowed on the aggregate sum of principal and damages.

V. Sight Bills.—A statute of 1853-4 provides, that on bills of exchange, payable at sight, grace shall not be allowed.

Decisions.

Bills.—The notary's protest is evidence of presentment and refusal to pay, in Missouri. 4 Missouri, 52.

A bill of exchange payable at a time certain need not be presented for acceptance until maturity; but if it is, notice and protest are necessary. 8 Missouri, 268. But if the bill is presented for acceptance before that time, and acceptance refused, notice must be given in order to fix the liability of endorers. Ibid.

In demanding payment of a bill, it should be produced. 8 Missouri, 52. And in Missouri demand of payment is properly made on the third day of grace. A demand made at the counting-room of the acceptor of a bill of exchange, by the clerk of the holder, is sufficient, without showing a special authority in the clerk for that purpose. Ibid.

It is not indispensable for the notice of the dishonor of a bill to be sent to the post-office nearest to the residence of the party, nor even to the town in which he resides, if it be in fact sent to the post-office to which he usually resorts for his letters. 7 Missouri, 443. To hold an endorser, personal notice of the dishonor of the bill, or notice left at his dwelling-house or place of business, is necessary, where the parties reside in the same place. 7 Missouri, 467.

The Missouri statute making promissory notes assignable, vests the legal property in the assignee, and a suit cannot be maintained in the name of the payee for the use of the assignee. 5 Missouri, 433. The statute provision in the Revised Code of Missouri of 1835, that the holder of a negotiable note, in order to fix the liability of an endorser, shall, with due diligence, institute proceedings against the maker, was intended to supersede the necessity of demand and notice. 6 Missouri, 338.

XXVI. MISSISSIPPI.

I. Interest.—The legal rate of interest in Mississippi is six per cent. The following act was passed in March, 1856 :

Be it enacted, &c., That it shall be lawful for parties to contract in writing for the payment of any rate of interest not exceeding *ten* per cent per annum, upon any debt after the maturity thereof. *Sec. 2.* That this act shall be in force from the time of its passage. *Sec. 3.* That the provisions of this act shall not be applied to any contract heretofore made.

II. Damages on Bills.—No damages are allowed for default in the payment of any bill of exchange drawn by any person or persons within the State on any person or persons in any other State. On all domestic or inland bills (drawn on persons within the State), and protested for non-payment, five per cent. (See act of May 11, 1837.)

III. Foreign Bills.—The damages on bills of exchange drawn on persons without the United States, returned under protest, are 10 per cent., with all incidental charges and lawful interest.

IV. Sight Bills.—Grace is not allowed on bills of exchange, drafts, etc., payable *at sight*.

Decisions.

Under the statute of Mississippi, protest of an inland bill of exchange is not necessary to enable the holder to recover the amount of it of the drawer; that is necessary only to enable him to recover interest and damages. 6 Howard's S. C. R. 23.

It is not necessary that the notary should make out his formal protest of a bill at the time of presenting it for acceptance or payment, which is refused; but it is sufficient if he makes a note of the facts at the time, and draws up his protest afterwards. *Ibid.*

Bills.—An order payable out of a particular fund is not a bill of exchange. 1 Smedes & Marshall, 393.

An indulgence granted to the acceptor until the drawer should be heard from, based upon a sufficient consideration, exonerates the endorser. 6 Smedes & Marshall, 433.

An accommodation endorser is not discharged upon notice to the holder of the paper to sue the drawer, and proof of his failure to bring suit until after the drawer became insolvent. 5 Howard, 689.

Where the dwelling-house or place of business of the drawee of the bill is shut up, it seems that there must be inquiry in the neighborhood, in order to excuse presentment. 7 Howard, 297.

The notary who fills up and certifies the protest must present the bill himself; it can not be done by an agent. 4 Howard, 567.

A bill of exchange, payable at a certain time, need not be presented for acceptance until maturity; but if it is, notice and protest are necessary if acceptance be refused. 4 Howard, 567. See, also, 12 Verm. 401; 8 Miss. 268.

It seems that demand and protest must be made according to the laws of the place where the bill is made payable. In Mississippi, a demand of payment of a foreign bill is not good unless made by the notary himself. 7 Howard, 294.

An agent of the holder is allowed one day to give notice to his principal of a default, and the principal is entitled to one day, after he receives notice, to give notice by mail to the drawer or endorser. 7 Howard, 294.

The last endorser of a bill, in order to hold the prior endorsers, must give notice to them of its dishonor on the next day after he himself receives such notice. 4 Smedes & Marshall, 177.

XXVIII. OHIO.

I. *Interest*.—The law allows interest at six per cent. per annum on all money due, and no more. (The law allowing 10 per cent. on special contracts was repealed April 1st, 1859, but the repeal does not affect contracts entered into prior to this date.)

II. *Penalties*.—There are no penalties for usury. Contracts for greater rates are void *as to the excess only*; and if interest beyond six per cent. has been paid, the debtor has a right to have such excess applied as payment on the principal.

III. *Bills of Exchange*.—"Damages on protested bills of exchange, drawn by a person or corporation in Ohio, are not recoverable on any contract entered into after the passage of this act." (Passed and took effect April 4th, 1859.)

A check is not entitled to grace; but a check "payable on a future specified day is a bill of exchange," and entitled to grace. (5 Ohio State Rep. 13.)

"The usage of banks in any particular place, to regard drafts upon them payable at a day certain after date, as checks, and not entitled to days of grace, is inadmissible to control the rules of law in relation to such paper." (Ib.)

IV. *Sight Bills*.—By an act of the legislature, approved February 22d, 1861, it is enacted that "no note, check, draft, bill of exchange, order or other negotiable or commercial instrument, payable at sight or on demand, or on presentation, shall be entitled to days of grace, but shall be absolutely payable on presentment. All other notes, drafts or bills of exchange shall be entitled to the usual days of grace. This act is in force from its passage.

No grace is allowed on bank checks payable *at sight*. A statute is in force providing that "all bonds, notes or bills, negotiable by this act, shall be entitled to three days' grace in the time of payment."

Decisions.

1. Where the drawer of a bill of exchange has paid the bill to the payees, after the acceptors have refused to pay it, he has the right to sue the acceptors, in the name of the payees, for his own benefit. 3 McLean, 391.

2. A protest must be made by the notary, and if his name is used by his clerk, it is improper, and cannot make the protest valid. 3 McLean, 481.

3. A bill drawn in another State payable in Ohio, is entitled to grace, and a demand and notice on the second day of grace is not sufficient. 10 Ohio, 496.

4. A note for a certain sum, payable in bank paper, is negotiable under the statute. 1 Ohio, 189.

5. The putting a seal to a note does not change the commercial character of the paper. 5 Ohio, 222.

6. In an action by the assignee against the maker of a single bill, under seal, the endorsement is necessary to be proved. 1 Ohio, 261.

7. Every endorsement of a bill of exchange is a new contract, and each endorser becomes to the subsequent holder a new drawer. 10 Ohio, 180.

8. Where a note is payable at a certain place, no demand is necessary in order to charge the maker; but if the maker be there, ready to pay the money, and no one be there to receive it, the duty to pay still remains, but no action can be sustained until a subsequent personal demand be made. 1 Ohio, 483.

9. No protest of the dishonor of a bill drawn by a citizen of one State on a citizen of another is necessary, except to recover statute damages. 10 Ohio, 496.

XXIX. TENNESSEE.

I. *Interest*.—The legal rate of interest in Tennessee is six per cent.; special contracts may, however, be made for a higher rate, not exceeding ten per cent. (Act Feb. 21, 1860.)

II. *Penalty for Violation of the Usury Laws*.—Liable to an indictment for misdemeanor. If convicted, to be fined a sum not less than the whole usurious interest taken and received, and no fine to be less than ten dollars. The borrower and his judgment creditors may also, at any time within six years after usury paid, recover it back from the lender.

III. *Damages on Bills*.—The damages on bills of exchange negotiated in Tennessee, payable in other States, and protested for non-payment are 3 per cent.

IV. *Foreign Bills*.—The damages allowed on foreign bills of exchange, returned under protest, are as follows:

1. If upon any person out of the United States, and in North America, bordering upon the Gulf of Mexico, or in any part of the West India Islands 15 per cent.
2. If payable in any other part of the world 20 per cent.

V. *Sight Bills*.—The legislature has passed an act providing that bills at sight shall not be entitled to days of grace. By law, all negotiable paper due July 4, December 25, January 1, or on any day appointed by the Governor as a day of Thanksgiving, or as a public holiday, shall be payable the day preceding either of those days.

Decisions.

The certificate of a notary that he gave due notice to an indorser is not admissible evidence, unless it be made at the time of the protest, and be made in or on the protest. 4 Humphreys, 51.

Interest.—The rule of calculating interest in Tennessee, where payments have been made, is to calculate the interest upon the sum due from the time it was due up to the time payment was made, and to deduct the payment from the principal and interest at that time, and so till the whole is paid. 5 Yerger, 310.

Promissory Notes.—A due bill is in legal effect a promissory note, and as such assignable, and, where for a money demand, negotiable. 4 Humphreys, 247.

Where there are joint promisors, a release of one, to effect the discharge of the others, must be a release under the seal of the party, and must be pleaded by the party wishing to discharge himself by such act of the plaintiff. 4 Humphreys, 449.

Where a note is made payable in property at a given day, the tender must be made in good faith, and in pursuance of the terms of the contract. Any substantial variation from its terms will subject the payer to the payment of money. 5 Humphreys, 423.

A note for money, which may be paid in cotton, is not a negotiable instrument in Tennessee, and the indorser or assignor of such paper is not liable on his indorsement. But if such a note is not discharged in cotton at the stipulated time, it becomes a money demand, and debt and detinue will lie against the maker. 5 Yerger, 435.

In Tennessee, where a note under seal was given, and a covenant entered into by the payee for the delivery of the articles which were the consideration for which the note was given, it was held, that the maker of the note, under the act of 1817, c. 16, could inquire into its consideration. 6 Yerger, 515.

XXX. TEXAS.

I. Interest.—On all written contracts ascertaining the sums due, when no rate of interest is expressed, interest may be recovered at the rate of eight per cent. per annum.

The parties to any written contract may stipulate for any rate of interest, not exceeding twelve per cent. per annum.

Judgments bear eight per cent. interest, except where they are recovered on a contract in writing which stipulated for more, not exceeding twelve, in which case they bear the rate contracted for.

No interest on accounts, unless there be an express contract; but only eight per cent. can be recovered on a verbal contract.

Contracts to pay interest on account will not be presumed from previous course of dealing.

Penalty for Violation of the Usury Laws.—Forfeiture of all the interest paid or charged.

III. Damages on Bills.—An act giving damages upon protested drafts and bills of exchange drawn upon persons living out of the limits of the State, passed December, 1851.

SECTION 1. *Be it enacted by the Legislature of the State of Texas,* That the holder of any protested draft or bill of exchange, drawn within the limits of this State, upon any person or persons living beyond the limits of this State, shall, after having fixed the liability of the drawer or indorser of any such draft or bill of exchange, as provided for in the act of March 20, 1848, be entitled to recover and receive 10 per cent. on the amount of such draft or bill, as damages, together with interest and cost of suit thereon accruing. *Provided,* that the provisions of this act shall not be so construed as to embrace drafts drawn by persons other than merchants upon their agents or factors.

IV. Sight Bills.—By usage, grace is not generally allowed on bills, drafts, etc., payable *at sight*, but the rule is not invariable in this State.

Bills of Exchange.—The general rule is that the holder of any bill of exchange may fix the liability of the drawer (where bill has been accepted) or any endorser, without protest or notice, by instituting suit against the acceptor before the first term of the district court to which suit can be brought, (or, if the amount do not exceed \$100, exclusive of interest, by instituting suit before Justice of the Peace, within sixty days,) after the right of action accrues; or by instituting suit before the second term of said court, and showing good cause why the suit was not instituted before the first term.

The drawer of any bill of exchange which shall not be accepted when presented for acceptance, shall be immediately liable for the payment thereof.

XXXI. WISCONSIN.

After January, 1863, the legal rate of interest, by an act of the legislature, is to be seven per cent. An usurious contract is void, and the party loaning the money is liable to a penalty of three times the usury in addition.

II. *Penalty for Violation of the Usury Laws.*—Whenever any person shall apply to any court in this State to be relieved in case of a usurious contract or security, or when any person shall set up the plea of usury in any action or suit instituted against him, such person, to be entitled to such relief or the benefit of such plea, shall prove a tender of the principal sum of money or thing loaned, to the party entitled to receive the same. Act March 29, 1856.

III. *Damages on Bills of Exchange.*—The damages on bills of exchange, drawn or indorsed in Wisconsin, payable in either of the States adjoining that State, and protested for non-acceptance or non-payment, are

5 per cent.

If drawn upon a person, or body politic or corporate, within either of the United States, and not adjoining to that State, the damages are

10 per cent.

IV. *Foreign Bills.*—The damages on bills of exchange, drawn or endorsed in Wisconsin, payable beyond the limits of the United States, and protested for non-acceptance or non-payment, are (R. S. 1849, p. 263)

5 per cent.

Together with the current rate of exchange at the time of demand.

V. *Sight Bills.*—On all bills of exchange, payable at sight, or at a future day certain, grace shall be allowed (R. S. 1849, p. 263), but not on bills of exchange or notes payable on demand.

Decisions and Statute.

Promissory Notes.—Where in an action brought upon a promissory note, executed by the defendant as a trustee of a company, whereby he promised to pay, and also upon another note which he subscribed with his own proper name, but adding his representative name of trustee, a general demurrer to the declaration will not be sustained. *Rupert vs. Madden*, 1 Chandler's Supreme Court Reports, 1850, p. 146.

The addition in the body of the notes, as appended to the name of the maker subscribed thereto, is a mere *descriptio personæ* of the party making the note, and can not be so construed as to exempt him from personal liability. The description which he gives of himself, either in the note or in subscribing the same, is to be regarded as merely descriptive of his person; but can not be construed as relieving him from personal liability. *Ibid.*

Partnership.—Where a partnership exists between two persons, one of whom is a dormant partner, and the creditors of the firm have obtained judgments against the ostensible partner, founded upon debts created upon the partnership accounts, upon which executions have been issued *nulla bona*, a bill in equity, against both partners, will be sustained upon the allegation that the dormant partner had, by fraudulent connivance of the ostensible one, obtained the possession, and laid claim to all the partnership assets, in fraud of the creditors: the relief which equity will give is to subject the whole assets to the payment of such debts. *Ibid.*, Vol. II. p. 222.

FOREIGN BILLS OF EXCHANGE.

Forms of Bills of Exchange ordinarily used in the French, German, Dutch, Italian, Spanish, Portuguese, Swedish and Danish languages.

As many bills in foreign languages pass through the hands of numerous bankers, it may be useful to give a list of some of those words which express the amount and the time, the two main points in a bill of exchange:

<i>English,</i>	One,	Two,	Three,	Sixty,	Ninety.
<i>German,</i>	Ein,	Zwei,	Drei,	Sechzig,	Neunzig.
<i>Dutch,</i>	Een,	Twee,	Drie,	Zestig,	Negentig.
<i>French,</i>	Un,	Deux,	Trois,	Soixante,	{ Quatre-vingt-dix, or Nonante.
<i>Italian,</i>	Uno,	Due,	Tre,	Sessanta,	Nonanta, or Novanta.
<i>Spanish,</i>	Uno,	Dos,	Tres,	Sesenta,	Noventa.
<i>Portuguese,</i>	Hum,	Dous,	Tres,	Secenta,	Noventa.
<i>Swedish,</i>	En,	Twa,	Tre,	Sexti,	Nitti.
<i>Danish,</i>	Een,	To,	Tre,	Tredsindstyve,	Halvfemtesindstyve.

<i>English,</i>	Two months after date,	Three days after sight.
<i>German,</i>	Zwei monate nach dato,	Drei tage nach sicht.
<i>Dutch,</i>	Twee maanden na dato,	Drie dagen na zicht.
<i>French,</i>	A deux mois de date,	A trois jours de vue.
<i>Italian,</i>	{ A due mesi dopo data,	{ A tre giorni vista.
		{ A tre giorni depo vista.
<i>Spanish,</i>	{ A dos meses de la fecha,	{ A tres dias vista.
	{ A dos meses data,	
<i>Portuguese,</i>	A dous mezes de data,	A tres dias vista.
<i>Swedish,</i>	Twa manader ifran dato,	Tre dagar efter sigt.
<i>Danish,</i>	To maander efter dato,	Tre dage efter sigt.

In all the above languages, "at sight" is usually expressed by *a vista*, except the French, which expresses it by *à vue*. "At usance" is expressed by *a uso* or *ad uso*. The names of the months so nearly resemble the English, that a mistake can but rarely occur.

The following are forms of bills in each of the languages named :

• FRENCH.

Lillie, le 28 Septembre, 1848.

Bon pour £158 9 Sterlings.

Au vingt-cinq Décembre prochain, Il vous plaira payer par ce mandat à l'ordre de nous-mêmes la somme de cent cinquante-huit livres sterlings 9 schellings valeur en nous-mêmes et que passerez suivant l'avis de

*A Messieurs
à Londres.*

GERMAN.

Nürnberg, den 28 October, 1848.

Pro £100 Sterling.

Zwei monate nach dato zahlen Sie gegen diesen Prima Wechsel an die Ordre des Herrn Ein Hundert Pfund Sterling den Werth erhalten und bringen solche auf Rechnung laut Bericht von.

*Herren
London.*

DUTCH.

Gruwé, den 1st November, 1848.

Voor £59 17 6.

Twee maanden na dato gelieve UEd te betalen voor dezen onzen prima Wisselbrief de secunda niet betaald zynde aan de ordre van de Heeren negen & vyftig Ponden zeventien schelling en zespenes sterling, de waarde in rekening UEd stelle het op rekening met of zonder advys van

*de Heer
te London.*

• ITALIAN.

Livorno, le 25 Settembre, 1848.

Per £500 Sterline.

A Tre mesi data pagate per questa prima di Cambio (una sol volta) all'ordine, la somma di Lire cinque cento sterline valuta cambiata, e ponete in conto M. S. secondo l'avviso Addio.

*Al
Londra.*

SPANISH.

Malaga á 20 de Setbr de 1848.

Son £300.

A noventa dias fecha se serviran V^a mandar pagar por este primera de cambio á la orden de los S^{ras} Trescientas libras Esterlinas en oro o plata valor recibido de dhos S^{ras} que anotaran valor en cuenta segun aviso de

A los S^{ras}

Londres

PORTUGUESE.

£600 Esterlinas.

Lisbon, aos 8 de Dezembro de 1848.

A Sessenta dias de vista precizos pagará V^a por esta nossa unica via de Letra Segura á nós ou á nossa Ordem a quantia acima de Seis Centas Libras Esterlinas valor de nós recebido em Fazendas, que passara em Comta segundo o aviso de

Ao Sen^r

Londres.

SWEDISH.

Bjorneberg, den 23 September, 1848.

For £ Sterl. 100.

Nittio Dagar efter dato behagade H. H. emot denna prima Wexel (secunda obetald) betala till Herr elle ordres Etthundra Pund Sterling som stalles i rakning enligt avis.

Herrar

London.

DANISH.

Kjøbenhavn, 9 December, 1848.

Rixdalers R. M. 4,000.

Tre maaneder efter dato behager de at betale denne Prima Vexel, Secunda ikke, till Herr eller ordre med Fire Tusinde Rixdalers R. M., Valutta modtaget og stilles i Regning ifølge avis.

Herrer

London.

FORMS OF NOTICE OF PROTEST.

THE following forms have been prepared after careful investigations of the subject, and with a view to combine all the information required by the latest decisions of the State Courts.

In the case of the MECHANICS' BANK vs. SULLIVAN, before the Supreme Court of New-York, at Brooklyn, in 1863, it was decided that the printed signature to a notice of protest, by a notary public, is valid.

FORM USED IN NEW-YORK.

§ *New-York,, 186*
Please to take notice, that a promissory Note for §, made by, endorsed by you, having been duly presented and payment thereof demanded, which was refused, is therefore protested for non-payment, and that the holders look to you for payment thereof.
 *Notary Public.*

FORM OF NOTICE USED BY THE NOTARY OF THE PHILADELPHIA BANK.

§ *Philadelphia,, 186*
Payment of note in favor of and by endorsed, for §, dated, delivered to me for protest by the Bank of Philadelphia, being this day due, demanded and refused, it has been by me duly protested accordingly, and you will be looked to for payment, of which you hereby have notice.
 *Notary Public.*

FORM USED BY THE NOTARY OF THE BANK OF VIRGINIA.

§ *Richmond, Va.,, 186*
Take notice, that note for §, dated the day of, 186 , and payable days after date, to the order of, at the Bank of Virginia, and endorsed by, being due and unpaid, the same was presented by me at the Bank, and payment thereof then and there demanded, which was refused. Whereupon the said note was dishonored, and I duly protested the same for non-payment, and the holders look to you for payment, as endorser thereof, for principal, interest, damages and costs.
Done at the request of the Cashier of the Bank of Virginia.
 *Notary Public.*

Notice of Protest.

FORM ADOPTED BY THE CAYUGA COUNTY BANK, NEW-YORK.

§..... Auburn,, 186

Sir,—Take notice, that a promissory note made by, to order of, for dollars, dated at after date, this day due, endorsed by you, was this day presented by me, at the Cayuga County Bank, where the same was made payable, and payment thereof demanded of the of said bank, and by him refused, and is this day protested for non-payment. The holder looks to you for the payment of the same.

....., Notary Public.

To

FORM OF NOTICE USED IN VERMONT.

§.....

A promissory note for dollars, dated, payable after date, to, signed by, endorsed by, having been duly presented for payment this day, and payment refused, has been protested by me for non-payment. I now hereby give you notice, that the holder looks to you for payment, interest, cost and damages.

....., Notary Public.

FORM USED BY THE NOTARY OF THE SUFFOLK BANK, BOSTON.

§.....

Boston,, 186

Sir,—A promissory note for \$....., dated, signed payable to the order of, at, endorsed by, having been protested by me this day for non-payment, I hereby notify you that the holder looks to you for payment, interest, cost and damages, payment having been duly demanded and refused.

Done at the request of the Cashier of the Bank

....., Notary Public.

BILL OF EXCHANGE.

§.....

Boston,, 186

A bill of exchange, drawn by on, for dollars, dated, 186, payable after, in favor of, and endorsed by, due this day, is protested for non-payment, by direction of the holder, payment having been duly demanded and refused.

The holder requires of you payment of the same, with interest, cost and damages.

....., Notary Public.

REMARKS.

Judge STORY, in his *Treatise on Promissory Notes*, says: The endorsement of a promissory note, in contemplation of law, amounts to a contract on the part of the endorser, with and in favor of the endorsee, and every subsequent holder to whom the note is transferred. *First*, that the instrument itself and the antecedent signatures thereon are genuine. *Second*, that he, the endorser, has a good title to the instrument. *Third*, that he is competent to bind himself by the endorsement as endorser. *Fourth*, that the maker is competent to bind himself to the payment, and will, upon due presentment of the note, pay it at maturity. *Fifth*. That if, when duly presented, it is not paid by the maker, he, the endorser, will, upon the due and reasonable notice given to him of the dishonor, pay the same to the endorsee or holder.

There is no particular form of notice required, but it is indispensable that it should, either expressly or by just and natural implication, contain, in substance, the following requisites:

1st. A true description of the note, so as to ascertain its identity.

2d. An assertion that it has been duly presented to the maker at its maturity, and dishonored.

3d. That the holder or other person giving the notice, looks to the person to whom the notice is given, for payment and indemnity.

This statement is essential to establish the claim or right of the holder, or the party giving notice, for otherwise he will not be entitled to any payment from the endorser. It will be sufficient, indeed, if the notice sent, necessarily, or even fairly, implies by its *terms* that there has been a due presentment and dishonor at the maturity of the note; but mere notice of the fact that the note has not been paid, affords no proof whatever that the note has been presented in due season, or even that it has been presented at all.

The Supreme Court of the United States have decided, that "where a notice is sent, after the exercise of due diligence, and inquiry as to the residence of the endorser, a right of action immediately accrues to the holder, and subsequent information of another character as to the true residence of the endorser does not render it necessary for the holder to send him another notice.

The law does not require actual notice. It requires reasonable diligence only, and reasonable efforts, made in good faith, to give it. And if sufficient inquiries have been made, and information received, upon which the holder has a right to rely, a mistake as to the nearest post-office does not deprive him of his remedy. He has done all that the law requires; and the notice thus sent fixes the liability of the endorser as effectually as if he had actually received it.—(*Howard's Reports*, vol. ix.)

Waiver of Notice.—In Maine it has been decided, that if the endorser of a promissory note knew that the note would not be paid on presentment, and that the maker had deceased, and his estate insolvent, such knowledge would not relieve the holder from his obligation to make the presentment and give due notice of dishonor.

Decease of Maker.—When the maker of a promissory note dies before it becomes payable, the holder should make inquiry for his personal representative, if there be one, and present the note at maturity for payment.

By whom held.—It has been held that notice of dishonor need not state on whose behalf payment is applied for, nor where the bill is lying; and a misdescription of the place where the bill is lying is immaterial, unless perhaps a tender were made there.

Kentucky.—The place where a bill of exchange is dated is, *prima facie*, the residence of the drawer, and, in the absence of proof to the contrary, notice sent to that place will be good.

In *Massachusetts*, (*R. S.* 303.) all bills of exchange payable at sight, or at a future day certain, and all promissory negotiable notes payable at a future day certain, within that State in which there is no express stipulation to the contrary, grace is allowed as it is by the custom of merchants on foreign bills of exchange, payable at a certain period after date or sight. These provisions do not extend to any bill of exchange, note or draft, payable on demand.

In *Louisiana*, the 1st of January the 8th of January, the 22d of February the 4th of July, the 25th of December, Sundays and Good Friday, are days of public rest. When the third, or both third and second days of grace on a bill or note falls upon a day of rest, such bill or note shall become due in the one case on the second, and the other on the first day of grace. In computing the delay allowed in giving notice of non-payment or non-acceptance of a bill or note, the days of public rest are not counted. (*Bullard & Curry's Digest*, 40.)

In *Michigan*, days of grace are not allowed upon any bill, note or draft, payable on demand, but are allowed upon all bills payable at sight, or at a future day certain, within the State, and all negotiable promissory notes and drafts payable at a future day certain within the State, wherein there is no express stipulation to the contrary. (2 *R. S.* of 1846, 157.)

In *New-Hampshire*, days of grace are allowed on all negotiable promissory notes, except those payable on demand, unless the instrument show the intention of the parties to be otherwise. (*R. S.* 180.)

In *Vermont*, bills and notes executed in any other State, but payable in that State, and all bills and notes executed in that State, and payable in any other State, are entitled to three days' grace; this does not extend to bills and notes payable on demand, or in any way but in money. (*R. S.* 73.)

ALPHABETICAL INDEX

TO SUBJECTS CONTAINED IN THE

MANUAL FOR NOTARIES PUBLIC AND BANKERS.

FOURTH EDITION, 1864.

PUBLISHED BY I. SMITH HOMANS, JR., NEW-YORK.

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"No expectation of forbearance or indulgence should be encouraged. Favor and benevolence are not the attributes of good banking. Strict justice and the rigid performance of contracts are its proper foundation."

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OF THE

Bankers' Magazine and Statistical Register

FROM

JULY, 1863, TO JUNE, 1864, BOTH INCLUSIVE.

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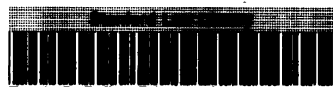
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